



American Tort Reform Association

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**Presentation of Sherman Joyce
President, American Tort Reform Association
Before the House Committee on Tort Reform
Lansing, Michigan
March 7, 2006**

Introduction

I. Michigan Has Been a Leader in the National Legal Reform Movement

- A. Medical liability
- B. Frivolous lawsuit sanctions
- C. Joint liability reform
- D. Obesity litigation reform
- E. Products liability reform

II. Legal Reform Boosts the Economy and Enhances Access to Health Care

- A. The tort system cost \$246 billion in 2003
- B. American Medical Association (AMA) designation of states in "crisis" of access to health care because of litigation
- C. Texas job creation linked to civil justice reform
- D. AMA dropped Texas from the "crisis" list due to reforms

III. Michigan Courts Have Respected the Authority of the Legislature to Make Policy in the Civil Justice Arena

- A. Contrary to decisions in many other states
- B. *Henry v. Dow*, where the court deferred to the Legislature on "medical monitoring"

IV. New Frontiers and How to Avoid the Dubious Distinction of Being a "Judicial Hellhole®"

"Do's":

- A. Continue the positive trend in the Midwest toward reform: Ohio, Missouri, and Illinois
- B. Pass legislation to ensure that Michigan's consumer protection statute does not become a vehicle for lawsuit abuse
- C. Enact a statute to regulate the hiring of outside counsel by a governmental entity on a contingent basis
- D. Address the morass of asbestos and silica litigation to ensure that all parties are treated equitably
- E. Reform the jury system by ensuring that all citizens participate in the process while addressing undue burdens on individuals and small businesses

"Don'ts":

- A. Become Home to a Judicial Hellhole
 - 1. Venue: Judicial Hellholes become a dumping ground for cases in which the court where the claim is brought has little or no relation to the underlying matter or the parties
 - 2. Administration of Justice: Fairness requires that both sides be treated equally in matters such as the admissibility of expert evidence
- B. Turn back the clock by rolling back meaningful reforms. Judicial activism in Wisconsin is spurring litigation in that state

Conclusion



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**Supplemental Materials for Presentation of
Sherman Joyce
President
American Tort Reform Association**

March 7, 2006

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MICHIGAN TORT REFORMS

Appeal Bond Reform: HB 5151 (2002). Limits the amount a defendant can be required to pay to secure the right to appeal to \$25 million. Provides that this limit will be adjusted on January 1, 2008 and again on January 1 every five years after that by an amount determined by the state treasurer to reflect the annual aggregate percentage change in the Detroit consumer price index since the previous adjustment. Provides that a court will rescind the limit if an appellee proves by a preponderance of the evidence that the party for whom the bond to stay execution has been limited is purposefully dissipating or diverting assets outside of the ordinary course of business for the purpose of avoiding ultimate payment of the judgment.

Collateral Source Rule Reform: HB 5154 (1986). Permits the admissibility of evidence of collateral source payments after the verdict and before judgment is entered. Permits courts to offset awards, as long as a plaintiff's damages are not reduced by more than the amount awarded for economic damages. The statute providing for the admissibility of collateral source payments in personal injury actions did not constitute an unconstitutional taking of property and did not violate the equal protection or right to jury trial provisions of the State Constitution. *Heinz v. Chicago Road Investment Co.*, 549 N.W.2d 47 (Mich. App. 1996), appeal denied, 567 N.W.2d 250 (Mich. 1997).

Frivolous Lawsuit Sanction: HB 5154 (1986). Allows a court to assess court costs and attorneys' fees for frivolous actions or defenses.

Joint and Several Liability Reform: HB 4508 (1995): Mich. Comp. Laws §§ 600.6304(4), 600.6312. Bars application of the rule of joint and several liability in the recovery of all damages, except in cases of employers' vicarious liability and in medical liability cases, where the plaintiff is determined not to have a percentage of fault.

Joint and Several Liability Reform: HB 5154 (1986): Mich. Comp. Laws §§ 600.6304(4), 600.6312. Bars application of the rule of joint and several liability in the recovery of all damages from municipalities. Bars application of the rule of joint and several liability in the recovery of all damages from all other defendants, except in products liability actions and actions involving a blame-free plaintiff. Provides that defendants are severally liable, except when uncollectible shares of a judgment are reallocated between solvent co-defendants according to their degree of negligence.

Medical Liability Reform: Collateral Source Rule Reform: Mich. Comp. Laws § 600.6303. Provides for medical liability awards to be offset by collateral sources, less any premiums paid to obtain the benefit.

Medical Liability Reform: Contingent Fee Reform: Mich. Ct. R. 8.121. Limits contingent fees in medical liability cases for personal injury or death to 33.3% of the amount recovered.

MICHIGAN TORT REFORMS (continued)

Medical Liability Reform: Noneconomic Damages: SB 270/H 2 (1993): Mich. Comp. Laws § 600.1483. Limits the award of noneconomic damages in medical liability cases to \$280,000 for ordinary occurrences, and \$500,000 if the claimant has suffered brain damage, spinal cord damage, damage to the reproductive system which prevents procreation, or injury to cognitive ability that leaves the plaintiff unable to live alone.

Medical Liability Reform: Periodic Payment of Future Damages: Mich. Comp. Laws § 600.6307. Requires that damages in excess of \$250,000 in medical liability cases are to be satisfied by the purchase of an annuity contract.

Obesity Litigation Reform: H.B. 5809 (2004). Exempts from civil liability manufacturers, packers, distributors, carriers, holders, sellers, marketers, promoters, or advertisers of food (as defined in 21 U.S.C. 321) or an association of one or more such entities when the claim is for weight gain, obesity, or a health condition associated with weight gain or obesity. The liability exemption does not apply if the claim is based on a material violation of a state or federal adulteration or misbranding requirement. The liability exemption also does not apply for any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food and the violation was committed knowingly and willfully. Provides that discovery and all other proceedings shall be stayed during a motion to dismiss. Finally, H.B. 5809 specifies that the state is prohibited from filing obesity lawsuits.

Periodic Payment of Future Damages: HB 5154 (1986). Mandates the periodic payment of future damages exceeding \$250,000.

Prejudgment Interest Reform: HB 5154 (1986). Prohibits the assessment of prejudgment interest on awards for future damages.

Product Liability Reform: SB 344 (1995). Bars application of the rule of joint and several liability in product liability cases. Provides statutory defenses to product liability claims, including adherence to government standards, FDA standards, and sellers' defenses. Provides an absolute defense, where the plaintiff was found to be at least 50% at fault due to intoxication or a controlled substance. Limits the award of noneconomic damages in product liability cases not involving death or loss of vital bodily function to \$280,000. Limits the award of noneconomic damages in such cases to \$500,000.

Product Liability Reform: Venue Reform: HB 4508 (1995). Provides venue control in product liability cases.



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Economic Impact of the Civil Justice System

- The cost of the U.S. tort system for 2003 was \$245.7 billion, a \$12.5 billion increase from 2002, representing a 5.4% increase, which exceeded the overall economic growth rate of 4.9%

Source: Tillinghast-Towers Perrin. *U.S. Tort Costs: 2004 Update*, (New York, New York, 2005)

- U.S. tort costs have increased over one hundred fold in the last 50 years. In comparison, GDP has increased by a factor of 37 in the same time period and population has increased by a factor of less than two.

Source: Tillinghast-Towers Perrin. *U.S. Tort Costs: 2004 Update*, (New York, New York, 2005)

- U.S. tort system cost \$845 per U.S. citizen in 2003, and could cost \$1,000 per citizen by 2006.

Source: Tillinghast-Towers Perrin. *U.S. Tort Costs: 2004 Update*, (New York, New York, 2005)

- U.S. tort costs in 2003 were 2.23% of Gross Domestic Product (GDP), the highest level since 1990.

Source: Tillinghast-Towers Perrin. *U.S. Tort Costs: 2004 Update*, (New York, New York, 2005)

- At over 2% of GDP, U.S. tort costs are more than double the tort costs of Denmark, the United Kingdom, France, Japan, Canada and Sweden, all of which have tort systems estimated to cost less than 1% of GDP.

Source: "Who Pays for Tort Liability Claims? An Economic Analysis of the U.S. Tort Liability System," Council of Economic Advisers, April 2002.

- The U.S. tort system is inefficient; it returns less than 50 cents on the dollar and less than 22 cents for actual economic loss to claimants.

Source: Tillinghast-Towers Perrin. *U.S. Tort Costs: 2003 Update*, (New York, New York, 2003)

- 20% of small businesses report spending more time on liability problems and potential liability than on important business activities such as introducing new technologies or processes, obtaining or repaying business loans, and evaluating the competition or looking for ways to cut costs.

Source: National Federation of Independent Business. *National Small Business Poll: Liability*, Volume 2, Issue 2. (2002).

- Small businesses are four times as likely to be defendants in a liability suit as a plaintiff.

Source: National Federation of Independent Business. *National Small Business Poll: Liability*, Volume 2, Issue 2. (2002).

- Close to half (47 percent) of small business owners are somewhat or very concerned that they will be defendants in a liability suit in the next few years.

Source: National Federation of Independent Business. *National Small Business Poll: Liability*, Volume 2, Issue 2. (2002).

- 70 companies have been forced into bankruptcy due to asbestos litigation.

Source: National Association of Manufacturers

- Asbestos litigation accounted for \$9 billion, the largest portion of the \$27 billion increase in tort costs from 2002 to 2003.

Source: *Tillinghast-Towers Perrin. U.S. Tort Costs: 2004 Update, (New York, New York, 2005)*

- Since 1975, medical malpractice costs have risen an average 11.8% per year, compared to an average annual increase of 9.2% for all other tort costs

Source: *Tillinghast-Towers Perrin. U.S. Tort Costs: 2004 Update, (New York, New York, 2005)*



TOWERS
PERRIN

TILLINGHAST



U.S. Tort Costs: 2004 Update

Trends and Findings on the Cost of the U.S. Tort System

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EXECUTIVE SUMMARY

KEY FINDINGS

U.S. tort costs grew by 5.4% in 2003, representing a dramatic reduction from the double-digit trends experienced in 2001 and 2002. This reduction is reflective of more moderate tort cost trends in the commercial lines of insurance, where asbestos-related costs accounted for large increases in tort costs during 2001 and 2002.

The U.S. tort system cost \$246 billion in 2003, which translates to \$845 per person, or \$35 per person more than in 2002. This compares to a cost of \$12 per person in 1950 (not adjusted for inflation).

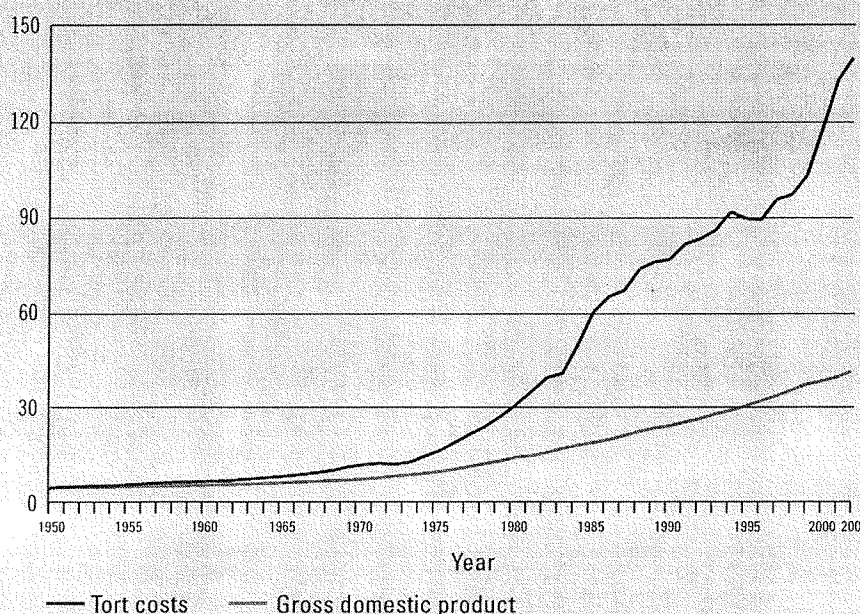
Over the last 50 years, tort costs in the U.S. have increased more than a hundredfold. In contrast, overall economic production (as measured by GDP) has grown by a factor of 37 and population has grown by a factor of less than two.

The 5.4% rate of growth in tort costs in 2003 slightly exceeded overall economic growth of 4.9%. During the past 50 years, growth in tort costs has exceeded growth in GDP by an average of two to three percentage points, with the largest disparity having been nearly six percentage points in the 1950s. In the 1990s, this trend reversed itself, with GDP growth in excess of growth in tort costs, reflecting a period of steady economic growth and low inflation without significant growth in tort costs.

Since 1975 (the first year for which insured medical malpractice costs were separately identified), the increase in

GROWTH IN TORT COSTS VS. GDP SINCE 1950

Ratio to 1950 levels



medical malpractice costs has outpaced increases in overall U.S. tort costs. Medical malpractice costs have risen an average of 11.8% per year, compared to an average annual increase of 9.2% per year for all other tort costs. The compounded impact of this 28-year difference in growth rates is that medical malpractice costs have risen by a factor of 23 since 1975, while all other tort costs have grown by a factor of 12.

At nearly \$27 billion in 2003, medical malpractice costs translated to \$91 per person. This compares to \$5 per person in 1975 (not adjusted for inflation). This significant escalation in medical

GROWTH OF TORT COST

Years	Average Annual Increase in Tort System Costs
1951-1960	11.6%
1961-1970	9.8
1971-1980	11.9
1981-1990	11.8
1991-2000	3.2
2001	14.7
2002	13.4
2003	5.4
52 years (1951-2003)	9.7%

malpractice costs has contributed to the increase in health care costs in the U.S. over the past 30 years.

FUTURE IMPLICATIONS

Despite the more moderate rate of growth in tort costs in 2003 relative to the two years prior, there are a number of societal influences, potential legislation reforms and political changes that make the future uncertain.

Reassessments of liabilities

In 2002 and 2003, the largest single contributor to the rise in tort costs was a significant upward reassessment of liabilities associated with asbestos claims, whose numbers have continued to mushroom. We estimate that this reassessment accounted for \$9 billion of the increase in 2003 tort costs over 2002 levels, a slight decrease from the \$10 billion estimated impact in 2002. Without the successful passage of asbestos litigation reform measures, we cannot rule out the possibility of further upward assessments in these liabilities.

As indicated in the table at right, without the asbestos-related costs, the increase in U.S. tort system costs between 2002 and 2003 would have been approximately 6.4%, compared to an 11.5% increase between 2001 and 2002 for comparable costs. However, reassessments have occurred in other areas as well. In 2003, for example, a number of major insurance companies reported significant upward reassessments of their non-asbestos liabilities, in lines of insurance such as directors and officers liability and general liability. Some industry experts project that

the insurance industry's liability estimates (including asbestos) are understated by as much as \$60 billion. To the extent that this projection is correct, significant reassessments will continue. Since a portion of those reassessments would likely occur in the liability lines of insurance, there will continue to be upward pressure on tort costs.

Litigious society

Reports of class action lawsuits by groups of injured parties and shareholder lawsuits against the boards of directors of publicly traded companies continue to appear in the business media. Absent sweeping reform, we see no indication that these trends will abate in the near future. In fact, there appears to be a shift in the types of liabilities that make up the total tort costs in the U.S., from individuals suing individual entities to groups of plaintiffs taking legal action against one or more entities. Current examples include potential claims against pharmaceutical companies for the alleged ill effects of certain prescription drugs and actions against food establishments for obesity-related injuries.

Impact of election results on reform measures

A number of states have introduced legislative tort reform measures; whether these measures will be successfully implemented or subsequently overturned by the courts (which has occurred in the past) is unknown at this time.

Some suggest that the recent election results in the U.S. and the resulting Republican-dominated Congress could result in greater prospects for significant legal reform. These reforms might address such areas as class action lawsuits, medical malpractice claims and asbestos litigation.

While it is impossible to accurately predict future increases in tort costs, it does seem reasonable to assume that, without sweeping structural changes to the U.S. tort system, annual increases will be in the 5% to 8% range for the next several years. At this rate of increase, tort costs could approach \$1,000 per U.S. citizen by 2006 — representing a new quadruple-digit benchmark.

IMPACT OF INSURED ASBESTOS LIABILITIES ON U.S. TORT COSTS (\$billions)

	Including Asbestos	Excluding Asbestos
2000	\$179.2	\$177.0
2001	205.5 (+14.7%)	200.0 (+13.0%)
2002	233.2 (+13.5%)	223 (+11.5%)
2003	245.7 (+5.4%)	237.1 (+6.4%)

INTRODUCTION

U.S. Tort Costs: 2004 Update represents the eighth study of U.S. tort costs published by the Tillinghast business of Towers Perrin. The first study was completed in 1985. The most recent study, incorporating results through 2002, was published in December 2003. This 2004 update provides results from 1950 through 2003, with projections through 2006.

A "tort," as defined by *Webster's Collegiate Dictionary*, is "a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction." It is important to note that the tort costs as calculated in this study include far more than just the claims that are litigated. Statistics on claims that are settled quickly, with no suits filed, are also included. Therefore, the costs tabulated in this study are not a reflection of litigated claims or of the legal system.

This study takes no position on whether tort costs are too high or too low. The purpose of the study is to attempt to

quantify the costs, not to support any particular point of view. Any connotation that an increase in tort costs is undesirable is unintended.

This study examines only one side of the U.S. tort system: the costs. No attempt has been made to measure or quantify the benefits of the tort system. This study makes no conclusion that the costs of the U.S. tort system outweigh the benefits, or vice versa.

FINDINGS

2003 TORT COSTS

Tillinghast estimates that total insured and self-insured tort costs in the U.S. were \$245.7 billion in 2003. This is an increase of \$12.5 billion, or 5.4%, from the estimated \$233.2 billion of tort costs in 2002. The \$12.5 billion increase in 2003 costs is the smallest since the \$10.9 billion increase in tort costs that occurred in 2000. At 5.4%, 2003 tort cost growth was far lower than in 2001 (a 14.7% increase) and 2002 (a 13.4% rise). While growth in personal lines tort costs has remained relatively stable at about 5% since 2001, growth in commercial lines costs dropped from over 20% in 2001 to 5.5% in 2003. It is the reduced growth in commercial lines tort costs that has driven down the total growth in tort costs in 2003.

Asbestos was a significant contributor to tort cost growth in both 2001 and 2002. In 2003, insured asbestos losses increased by approximately \$8.6 billion. While certainly significant, this was a smaller increase than the \$10.2 billion estimate for 2002. When asbestos-related insured tort costs are eliminated from both 2002 and 2003 estimates, the increase in tort costs in 2003 is approximately 6.4%. Essentially, the fact that insured asbestos losses increased less in 2003 than in 2002 has a dampening impact on the total growth in U.S. tort costs.

TABLE 1: COSTS RELATIVE TO GDP
(\$billions)

Year	U.S. Tort Costs	U.S. GDP	Tort Costs as % of GDP
1950	\$ 1.8	\$ 294	0.62%
1960	5.4	526	1.03
1970	13.9	1,039	1.34
1980	42.7	2,790	1.53
1990	130.2	5,803	2.24
2000	179.2	9,817	1.83
2002	233.2	10,487	2.22
2003	245.7	11,004	2.23

TABLE 2: COSTS RELATIVE TO POPULATION

Year	U.S. Population (millions)	U.S. Tort Costs (\$billions)	Tort Cost per Capita	Inflation-Adjusted* Tort Cost per Capita
1950	152	\$ 1.8	\$ 12	\$ 91
1960	181	5.4	30	187
1970	205	13.9	68	321
1980	228	42.7	187	419
1990	249	130.2	522	735
2000	281	179.2	637	680
2002	288	233.2	810	828
2003	291	245.7	845	845

*Restated in 2003 dollars, based on Consumer Price Index

Medical care inflation (as measured by the Consumer Price Index) also moderated slightly in 2002. The 4.0% increase was the lowest since 1999.

COSTS RELATIVE TO GDP

The ratio of U.S. tort costs to gross domestic product (GDP) has increased significantly since 1950. However, as shown above, the ratio of tort costs to GDP* was virtually unchanged in 2003 compared to 2002.

* Throughout this report, unadjusted, or nominal, GDP is used. Most news releases on GDP rely on inflation-adjusted, or real, GDP.

The year with the highest ratio of tort costs to GDP is 1987, at 2.33%. As shown in Appendix 1, the ratio generally declined from 1987 to 1999, when it reached 1.82%

COSTS RELATIVE TO POPULATION

Growth in U.S. tort costs since 1950 has far exceeded the growth in the U.S. population. Even after adjusting for inflation, tort costs per capita have risen by a factor of more than nine between 1950 and 2003.

As can be seen in *Table 2*, tort costs per capita, after adjusting for inflation, were lower in 2000 than in 1990. This was counter to steady increases in inflation-adjusted tort costs per capita both in prior decades as well as since 2000.

SPLIT TO PERSONAL VERSUS COMMERCIAL

Table 3 shows our estimate of the split of U.S. tort costs since 1990 on a personal versus commercial basis. "Commercial" in this distinction reflects torts alleged against business, including all medical malpractice. "Personal" tort costs include torts alleged against individuals, excluding medical malpractice. Personal tort costs are predominantly from automobile accidents.

As the table indicates, the increase in commercial tort costs since 1990 has exceeded the increase in personal tort costs. The difference is even greater when measured over the last five years.

One might expect the growth in personal lines tort costs to exceed the growth in commercial lines tort costs simply due to changes in auto insurance laws. Since 1990, four states (Colorado, Connecticut, Georgia and Hawaii) repealed at least some portions of their no-fault systems. These repeals would, in theory, bring additional claims into the tort system. (Note: No-fault costs are excluded from this study.)

Some of the higher growth in commercial tort costs is attributable to asbestos. However, even after removing insured asbestos losses totaling approximately \$9 billion in 2003 from the analysis, the commercial tort cost growth rate over the last five to 13 years remains above the personal tort cost growth rate.

TABLE 3: SPLIT TO PERSONAL VERSUS COMMERCIAL
(\$billions)

Year	Personal Tort Costs	Commercial Tort Costs
1990	\$52.0	\$ 78.2
1991	53.4	78.2
1992	56.4	83.8
1993	57.3	86.0
1994	60.1	88.0
1995	61.5	97.1
1996	62.7	92.1
1997	63.4	90.6
1998	66.3	99.2
1999	68.2	100.1
2000	72.3	106.9
2001	76.8	128.8
2002	80.0	153.2
2003	84.2	161.5
Average Annual Change		
Since 1990	3.8%	5.7%
Since 1998	4.9%	10.2%

METHODOLOGY AND APPROACH

COMPONENTS OF TORT COSTS

The methodology used to develop estimates of tort costs in this study is similar to the methodology used in prior Tillinghast studies of U.S. tort costs. This study incorporates three cost components:

- Benefits paid or expected to be paid to third parties (hereafter referred to as "losses")
- Defense costs
- Administrative expenses.

It is important to note that we have measured losses on an incurred basis, reflecting both payments as well as the collective change in reserves on incurred claims. We believe it is more appropriate to measure costs on an incurred basis than on a paid basis because of the greater time difference between an event and the payment of the claim than between the event and the estimate of the cost of that event. However, we recognize that more estimates of costs must be used when measuring on an incurred basis than when measuring on a paid basis.

Our use of incurred losses instead of paid losses has resulted in higher increases in tort costs in recent years. Had paid losses been used, the costs of asbestos-related claims included in the study would have been lower. However, use of incurred losses does not overstate tort costs. To argue this, one

would have to posit that insurers knowingly set reserves too high. We do not believe this is the case. In fact, some rating agencies believe that current insurance industry reserves are, in total, deficient.

Defense costs reflect costs directly incurred in the defense and investigation of a claim, as well as general claim-handling costs. The former is known in insurance industry parlance as allocated loss adjustment expenses (ALAE), while the latter is often referred to as unallocated loss adjustment expenses (ULAE).

Administrative expenses reflect expenses, other than defense costs, incurred by either the insurance company or self-insured entity in the administration of tort claims. Our inclusion of such costs has been questioned since those costs are not directly related to the disposition of specific tort claims. We take no position on the efficiency of the insurance industry's administrative expenses. However, we note the following:

- The relative share of total insured tort costs (as defined in *Table 4*) attributable to administrative expenses generally declined during the 1950s, 1960s and 1970s. However, the portion has not changed materially, either up or down, since 1980.
- The U.S. insurance industry is not a monopoly or a cartel. Insurers have an incentive to be as efficient as possible in order to either strengthen their competitive positions or maxi-

TABLE 4: TORT COSTS —
ADMINISTRATIVE EXPENSE PORTION

Time Period	Insured Tort Costs — Administrative Expense Portion
1950-1959	32.2%
1960-1969	29.0
1970-1979	26.0
1980-1989	22.0
1990-1999	23.0
2000-2003	21.9

mize their profits. To insinuate that the insurance industry is bloated or inefficient would be to suggest that the industry is not subject to cost pressures that face most competitive industries.

We believe administrative expenses are a real cost of the tort system. Their inclusion undoubtedly increases the absolute levels of estimated tort costs, but has a negligible impact on recent tort cost trends and actually lessens the long-term trends in tort cost growth.

As detailed in Appendix 3, Table 4 above shows the average administrative expense portion of insured tort costs by decade.

CATEGORIES OF TORT COST

Tillinghast computed tort costs in the following three categories:

- Insured costs (excluding medical malpractice)
- Self-insured costs (excluding medical malpractice)
- Medical malpractice costs.

We derived insured costs from composite financial data for the U.S. insurance industry, as tabulated by A.M. Best. These data are considered highly reliable in that they are subject to audit and are reviewed by state regulatory agencies. Moreover, while certain product lines have changed over time, the data are available on a consistent basis going back prior to 1950.

The statutory lines of business that we include in the insured category are as follows:

- Private passenger auto liability
- Homeowners multi-peril
- Farmowners multi-peril
- Commercial auto liability
- Commercial multi-peril
- Other liability
- Products liability.

The following should be noted regarding these lines of business:

- For both personal auto liability and commercial auto liability, costs associated with personal injury protection (PIP, also known as no-fault) are excluded. PIP costs are excluded since PIP is, in theory, a first-party coverage, not a liability coverage. This exclusion has only a minor impact on the commercial auto costs, but is material for personal auto liability.
- Homeowners and farmowners multi-peril are largely first-party property coverages that have a liability (or tort) element. We excluded 91% of the costs for these lines. Our estimate that 9% of the costs for these lines are tort-related is based on our experience with these coverages.
- Commercial multi-peril (CMP) also is a coverage that includes both property and liability. However, since 1992, insurance data have been split to the liability and property components. For years prior to 1992, we include up to 50% of total CMP costs in this study.

- We do not include any costs in this study from either workers compensation (in theory, a first-party coverage), aviation or ocean marine. The latter two coverages do have a liability component to them. However, we choose to exclude them given their size and a lack of foundation for estimating the liability portion.

The insured tort costs are the sum of the three components of losses, loss adjustment expenses and administrative expenses. The last component includes the following statutory expense categories:

- Commissions and brokerage
- Other acquisition expenses
- General expenses
- Taxes, licenses and fees.

Total tort costs from the A.M. Best data are reduced slightly to reflect an estimate of non-U.S. business in the data. The reduction varies by line of business and is approximately 2%.

Earned premiums are displayed in Appendix 3. The actual premiums are not considered in the total tort costs shown in column (6). (The arithmetic in

the Appendix multiplies premiums by ratios in which earned premium is the denominator, effectively eliminating premiums from the resulting product.) As such, any increase in insurance premiums without a corresponding increase in costs has no impact on the estimated tort costs in this study.

As shown in Appendix 3, total insured tort costs in 2003 are estimated to be \$173.9 billion.

The second category of tort costs is self-insured costs, excluding medical malpractice. Appendix 4 outlines the estimated costs for this category.

As shown in the Appendix, we estimate 2% of personal tort costs to be in this category. This is not the same as saying that 2% of the auto driving population is uninsured or that 2% of auto accidents involve an uninsured driver.

(Actual figures for these items would likely be far higher than 2%). Rather, the 2% provision reflects our estimate of the *additional* tort costs that are not included in the insured data. Many personal auto insurance policies include

coverage for uninsured motorists, whereby the insured is compensated if injured in an auto accident caused by an uninsured or underinsured driver. As such, the "insured" tort costs described previously already include the costs associated with many auto accidents involving uninsured drivers. The 2% provision adds \$1.7 billion to our estimate of 2003 personal tort costs.

Our estimate of self-insured tort costs is approximately \$43.6 billion for commercial risks in 2003. This estimate includes tort costs paid by various forms of self-insurance, such as large deductibles and captive insurance programs. The estimate would also consider insurance purchased directly from a non-U.S. insurance company, since such insured costs would not be captured in the A.M. Best data used to estimate the insured cost category.

To our knowledge, no source of data exists that tabulates the losses incurred by all self-insured entities. However, various organizations have estimated the size of this market. We have relied on the various estimates available, as well as Tillinghast's experience in this field, in developing the costs for this

category. We have assumed that the administrative expense component in this category is 10% lower than in the insured category.

Our estimate of commercial self-insured costs does not capture certain extraordinary costs. For example, costs resulting from the 1998 settlement between tobacco manufacturers and various state attorneys general are not explicitly included in this study.

As can be seen in Appendix 4, our estimates of commercial self-insured costs show a long-term increase in the portion of commercial tort costs that are self-insured.

The third category of tort costs is medical malpractice, both insured and self-insured. Appendix 5 shows the estimated medical malpractice tort costs since 1975. A.M. Best data have segregated medical malpractice costs since 1975. However, the portion of medical malpractice costs that are insured has fluctuated significantly since then.

Our estimate of medical malpractice costs is not based on A.M. Best data, but rather on Tillinghast's internal estimates of state-by-state medical malpractice costs. The state costs per physician and per occupied hospital bed are multiplied by the number of practicing physicians and occupied beds by year to develop the estimated medical malpractice losses and LAE. Administrative expenses are included; as with the self-insured estimate, we assume a 10% lower cost than insurance data would indicate.

As shown in Appendix 5, our estimate of medical malpractice costs in 2003 is approximately \$26.5 billion. Our analysis suggests that, since 1975, medical malpractice costs have increased at an annual rate of 11.8% versus 9.2% for all other tort costs.

EXCLUDED COSTS

Our definition of tort cost is largely governed by traditional liability insurance coverages. We previously noted the exclusion of tobacco settlements. For gray areas where awards and settlements are typically (but not always) excluded, such as punitive damages (which are included in the insurance contract in certain states and not in others) and certain types of contract and shareholder litigation, the costs reflected in this study are consistent with those reported by the insurance companies themselves. Therefore, while certain of these costs may be included in the tort cost totals, we are unable to separately account for them.

We have *not* included costs incurred by federal and state court systems in administering actual suits. We do not believe the omission of these costs significantly understates our cost index or in any material way distorts long-term trends.

Certain indirect costs are also omitted, such as those associated with litigation avoidance. These costs range from unnecessary and duplicative medical tests ordered by doctors as a defense against possible malpractice allegations, to the disappearance of certain products or whole industries from the marketplace because of high product liability cost.

As noted previously, this study does not attempt to quantify the benefits of the tort system. Such benefits include a systematic resolution of disputes, thereby reducing conflict, possibly including violence. Another indirect benefit is that the tort system may act as a deterrent to unsafe practices and products. From this perspective, compensation for pain and suffering is seen as beneficial to society as a whole.

LOOKING AHEAD

Tort cost growth in 2003, at 5.4%, was far lower than in 2001 and 2002 (14.7% and 13.4%, respectively). The lower growth rate is all due to commercial lines as shown in *Table 5*.

The stability in personal tort costs and moderation in commercial tort costs appears to have continued in 2004. We expect total tort costs to increase approximately 6.5% in 2004, to \$261.7 billion. The Congressional Budget Office (CBO) anticipates an increase in GDP of 6.8% in 2004.

Consequently, the 2004 ratio of tort costs to GDP is anticipated to remain at approximately 2.23%.

Looking ahead, we anticipate growth in U.S. tort costs to range from 5% to 8% in 2005, with a midpoint of 6.5%. We expect a similar increase in 2006. CBO forecasts call for GDP growth to be 6.1% in 2005, and 4.8% for 2006-2009. These assumptions yield projected tort costs, GDP and tort-to-GDP ratios as shown in *Table 6*.

The answers to several pending questions will help determine the near future of U.S. tort cost growth, including:

1. Will personal auto liability continue to show flat-to-negative frequency?
2. Are further reserve increases for asbestos likely?
3. Will recent issues surrounding mutual fund and insurance brokerage organizations generate significant tort costs?
4. Will recent medical malpractice reforms in various states (including Florida, Ohio and Texas) dampen tort costs for that category?
5. Has the litigation related to directors and officers of publicly held companies peaked?
6. Will obesity-related lawsuits begin to contribute significant tort costs?
7. Will litigation pertaining to certain prescription drugs have significant costs?

TABLE 5: ONE-YEAR GROWTH IN TORT COST

Year	Personal	Commercial	Total
2001	6.2%	20.0%	14.7%
2002	4.2	19.0	13.4
2003	5.3	5.5	5.4

TABLE 6: TORT COSTS RELATIVE TO GDP
(\$billions)

Year	U.S. Tort Costs	U.S. GDP	Tort Costs as % of GDP
2002	\$233.2	\$10,487	2.22%
2003	245.7	11,004	2.23
2004 (est.)	261.7	11,752	2.23
2005 (est.)	278.7	12,469	2.24
2006 (est.)	296.8	13,068	2.27

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COST OF THE U.S. TORT SYSTEM — 1950-2003

APPENDIX 1A

Year	U.S. Population (millions)	U.S. Civilian Workforce (millions)	CPI (all items)	CPI (medical care)	Gross Domestic Product (\$ billions)	Tort System Costs (\$ billions)	Tort Costs as % of GDP
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1950	152	62.2	0.241	0.151	\$ 294	\$ 1.8	0.62%
1951	155	62.0	0.260	0.159	339	2.3	0.67
1952	158	62.1	0.265	0.167	358	2.7	0.75
1953	160	63.0	0.267	0.173	379	3.0	0.78
1954	163	63.6	0.269	0.178	380	3.1	0.81
1955	166	65.0	0.268	0.182	415	3.4	0.82
1956	169	66.6	0.272	0.189	437	3.9	0.89
1957	172	66.9	0.281	0.197	461	4.5	0.98
1958	175	67.6	0.289	0.206	467	4.9	1.04
1959	178	68.4	0.291	0.215	507	5.2	1.03
1960	181	69.6	0.296	0.223	526	5.4	1.03
1961	184	70.5	0.299	0.229	545	5.7	1.04
1962	187	70.6	0.302	0.235	586	6.0	1.02
1963	189	71.8	0.306	0.241	618	6.6	1.07
1964	192	73.1	0.310	0.246	664	7.3	1.10
1965	194	74.5	0.315	0.252	719	7.9	1.11
1966	197	75.8	0.324	0.263	788	8.7	1.11
1967	199	77.3	0.334	0.282	833	9.6	1.15
1968	201	78.7	0.348	0.299	910	10.6	1.17
1969	203	80.7	0.367	0.319	985	12.0	1.22
1970	205	82.8	0.388	0.340	1,039	13.9	1.34
1971	208	84.4	0.405	0.361	1,127	15.0	1.33
1972	210	87.0	0.418	0.373	1,238	15.7	1.27
1973	212	89.4	0.444	0.388	1,383	15.2	1.10
1974	214	91.9	0.493	0.424	1,500	16.5	1.10
1975	216	93.8	0.538	0.475	1,638	20.0	1.22
1976	218	96.2	0.569	0.520	1,825	23.4	1.28
1977	220	99.0	0.606	0.570	2,031	28.0	1.38
1978	223	102.3	0.652	0.618	2,295	32.7	1.42
1979	225	105.0	0.726	0.675	2,563	37.0	1.44
1980	228	106.9	0.824	0.749	2,790	42.7	1.53
1981	230	108.7	0.909	0.829	3,128	49.2	1.57
1982	232	110.2	0.965	0.925	3,255	56.7	1.74
1983	234	111.6	0.996	1.006	3,537	64.4	1.82
1984	236	113.5	1.039	1.068	3,933	66.9	1.70
1985	239	115.5	1.076	1.135	4,220	83.7	1.98
1986	241	117.8	1.096	1.220	4,463	101.7	2.28
1987	243	119.9	1.136	1.301	4,739	110.5	2.33
1988	245	121.7	1.183	1.386	5,104	114.0	2.23
1989	247	123.9	1.240	1.493	5,484	126.2	2.30
1990	249	124.8	1.307	1.628	5,803	130.2	2.24
1991	252	125.3	1.362	1.770	5,996	131.6	2.20
1992	255	126.9	1.403	1.901	6,338	140.2	2.21
1993	258	128.4	1.445	2.014	6,657	143.3	2.15
1994	260	131.4	1.482	2.110	7,072	148.0	2.09
1995	263	132.0	1.524	2.205	7,398	158.5	2.14
1996	265	134.6	1.569	2.282	7,817	154.7	1.98
1997	268	136.7	1.605	2.346	8,304	154.0	1.85
1998	270	138.3	1.630	2.421	8,747	165.5	1.89
1999	273	139.9	1.666	2.506	9,268	168.3	1.82
2000	281	141.3	1.722	2.608	9,817	179.2	1.83
2001	285	141.9	1.771	2.728	10,128	205.5	2.03
2002	288	144.8	1.799	2.856	10,487	233.2	2.22
2003	291	146.5	1.840	2.971	11,004	245.7	2.23

Notes (2) From U.S. Census Bureau
 (3) From U.S. Department of Labor, Bureau of Labor Statistics
 (4), (5) From U.S. Department of Labor, Bureau of Labor Statistics

(6) From U.S. Department of Commerce, Bureau of Economic Analysis
 (7) From Appendix 2, column (5).
 (8) (7) / (6)

COST OF THE U.S. TORT SYSTEM — 1950-2003

APPENDIX 1B

Average Annual Changes by Groups of Years

Year	U.S. Population (millions)	U.S. Civilian Workforce (millions)	CPI (all items)	CPI (medical care)	Gross Domestic Product (\$ billions)	Tort System Costs (\$ billions)	Tort Costs as % of GDP
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1951-2003	1.2%	1.6%	3.9%	5.8%	7.1%	9.7%	2.5%
1951-1960	1.7	1.1	2.1	4.0	6.0	11.6	5.3
1961-1970	1.3	1.8	2.7	4.3	7.0	9.8	2.6
1971-1980	1.1	2.6	7.8	8.2	10.4	11.9	1.4
1981-1990	0.9	1.6	4.7	8.1	7.6	11.8	3.9
1991-2000	1.2	1.3	2.8	4.8	5.4	3.2	-2.0
2001	1.3	0.4	2.8	4.6	3.2	14.7	11.2
2002	1.0	2.0	1.6	4.7	3.5	13.4	9.6
2003	1.0	1.2	2.3	4.0	4.9	5.4	0.4
1951-1995	1.2	1.7	4.2	6.1	7.4	10.5	2.8
1996-2000	1.4	1.4	2.5	3.4	5.8	2.5	-3.2

Notes Based on figures in Appendix 1A

SUMMARY OF ALL TORT SYSTEM COSTS

APPENDIX 2

Year (1)	Liability Insured Cost (2)	Medical Malpractice (3)	Self- (Un) Insured (4)	Total Cost (5)
1950	\$ 1,723,059	\$ N/A	\$ 86,153	\$ 1,809,212
1951	2,177,633	N/A	108,882	2,286,515
1952	2,557,353	N/A	127,868	2,685,221
1953	2,828,158	N/A	141,408	2,969,566
1954	2,950,051	N/A	147,503	3,097,553
1955	3,250,829	N/A	162,541	3,413,370
1956	3,719,824	N/A	185,991	3,905,815
1957	4,293,067	N/A	214,653	4,507,720
1958	4,624,008	N/A	231,200	4,855,208
1959	4,971,526	N/A	248,576	5,220,102
1960	5,186,101	N/A	259,305	5,445,407
1961	5,394,567	N/A	269,728	5,664,295
1962	5,704,594	N/A	285,230	5,989,824
1963	6,299,547	N/A	314,977	6,614,525
1964	6,924,227	N/A	346,211	7,270,438
1965	7,570,265	N/A	378,513	7,948,778
1966	8,322,529	N/A	416,126	8,738,655
1967	9,150,869	N/A	457,543	9,608,413
1968	10,102,273	N/A	505,114	10,607,387
1969	11,413,351	N/A	570,668	11,984,019
1970	13,208,732	N/A	660,437	13,869,169
1971	14,304,768	N/A	715,238	15,020,007
1972	14,933,112	N/A	746,656	15,679,768
1973	14,621,296	N/A	563,240	15,184,535
1974	15,837,813	N/A	623,535	16,461,347
1975	17,914,909	1,158,476	960,444	20,033,829
1976	20,687,521	1,420,786	1,245,574	23,353,881
1977	24,073,405	1,811,894	2,081,899	27,967,198
1978	27,616,588	2,241,760	2,814,504	32,672,853
1979	30,934,883	2,745,213	3,358,083	37,038,178
1980	34,057,943	3,376,381	5,235,693	42,670,017
1981	38,929,780	4,065,717	6,245,906	49,241,403
1982	44,438,093	4,845,214	7,432,699	56,716,006
1983	49,946,629	5,802,016	8,676,935	64,425,580
1984	51,208,738	6,768,896	8,966,786	66,944,420
1985	64,455,656	6,740,227	12,484,152	83,680,035
1986	78,167,587	6,892,127	16,627,514	101,687,229
1987	85,112,183	7,314,182	18,087,846	110,514,210
1988	88,462,814	7,622,786	17,925,304	114,010,903
1989	97,030,370	8,498,791	20,639,237	126,168,398
1990	100,602,676	9,202,873	20,357,363	130,162,912
1991	101,016,143	10,077,004	20,522,153	131,615,300
1992	106,652,899	10,664,402	22,915,896	140,233,197
1993	108,560,517	11,635,903	23,127,472	143,323,892
1994	112,042,831	12,668,947	23,307,639	148,019,417
1995	118,478,058	13,441,955	26,602,720	158,522,733
1996	115,362,594	14,290,605	25,068,233	154,721,432
1997	113,561,713	15,666,686	24,767,144	153,995,543
1998	121,428,366	16,712,698	27,374,427	165,515,491
1999	122,863,786	18,080,438	27,339,281	168,283,506
2000	129,528,854	19,712,900	29,955,242	179,196,996
2001	146,177,700	21,902,829	37,453,893	205,534,422
2002	165,841,657	24,403,678	42,924,460	233,169,795
2003	173,873,885	26,536,754	45,333,244	245,743,883

Notes

Last three 000s omitted

(2) From Appendix 3 [1975-2003 excludes Medical Malpractice]

(3) From Appendix 5

(4) From Appendix 4 [Prior to 1973, .05 x (2)]

LIABILITY INSURED COSTS

APPENDIX 3

Year	Earned Premium	Loss & LAE Ratio	Expense Ratio	Combined Ratio	Insured Tort Costs
(1)	(2)	(3)	(4)	(5)	(6)
1950	\$ 1,752,857	64.3%	34.0%	98.3%	\$ 1,723,059
1951	2,083,720	71.1	33.4	104.5	2,177,633
1952	2,515,153	69.3	32.4	101.7	2,557,353
1953	2,981,588	63.2	31.6	94.9	2,828,158
1954	3,155,435	61.4	32.1	93.5	2,950,051
1955	3,337,773	64.9	32.5	97.4	3,250,829
1956	3,619,255	70.1	32.7	102.8	3,719,824
1957	4,035,199	74.0	32.4	106.4	4,293,067
1958	4,442,849	72.6	31.4	104.1	4,624,008
1959	4,951,128	69.9	30.6	100.4	4,971,526
1960	5,276,984	67.7	30.6	98.3	5,186,101
1961	5,504,507	67.1	30.9	98.0	5,394,567
1962	5,819,378	67.3	30.8	98.0	5,704,594
1963	6,224,657	70.5	30.7	101.2	6,299,547
1964	6,688,473	73.4	30.1	103.5	6,924,227
1965	7,379,531	73.5	29.1	102.6	7,570,265
1966	8,187,339	73.4	28.3	101.7	8,322,529
1967	8,947,529	74.1	28.1	102.3	9,150,869
1968	9,768,188	75.6	27.8	103.4	10,102,273
1969	10,957,402	76.9	27.2	104.2	11,413,351
1970	12,715,930	77.5	26.4	103.9	13,208,732
1971	14,273,904	74.1	26.1	100.2	14,304,768
1972	15,144,973	71.8	26.8	98.6	14,933,112
1973	14,360,195	74.8	27.0	101.8	14,621,296
1974	14,908,953	78.5	27.7	106.2	15,837,813
1975	16,500,824	81.5	27.0	108.6	17,914,909
1976	20,090,047	77.3	25.7	103.0	20,687,521
1977	24,973,118	71.4	25.0	96.4	24,073,405
1978	28,692,720	70.5	25.8	96.2	27,616,588
1979	31,088,697	73.1	26.4	99.5	30,934,883
1980	32,194,946	78.7	27.1	105.8	34,057,943
1981	32,838,195	90.7	27.8	118.6	38,929,780
1982	34,170,095	101.5	28.6	130.0	44,438,093
1983	36,235,619	109.2	28.6	137.8	49,946,629
1984	39,843,449	101.1	27.4	128.5	51,208,738
1985	50,372,373	102.9	25.1	128.0	64,455,656
1986	68,516,069	90.7	23.3	114.1	78,167,587
1987	78,337,490	84.8	23.9	108.6	85,112,183
1988	81,771,490	83.7	24.5	108.2	88,462,814
1989	83,745,030	89.7	26.1	115.9	97,030,370
1990	87,971,533	89.1	25.2	114.4	100,602,676
1991	89,311,786	87.0	26.1	113.1	101,016,143
1992	92,659,338	89.9	25.2	115.1	106,652,899
1993	96,562,526	87.6	24.8	112.4	108,560,517
1994	101,730,356	85.7	24.4	110.1	112,042,831
1995	105,299,103	87.6	24.9	112.5	118,478,058
1996	108,378,052	81.7	24.8	106.4	115,362,594
1997	110,525,049	77.4	25.4	102.7	113,561,713
1998	113,325,370	81.2	25.9	107.2	121,428,366
1999	111,429,324	83.7	26.5	110.3	122,863,786
2000	113,589,472	87.4	26.6	114.0	129,528,854
2001	124,411,884	92.5	25.0	117.5	146,177,700
2002	140,996,964	93.2	24.5	117.6	165,841,657
2003	161,077,976	83.9	24.1	107.9	173,873,885

Notes (2), (6) Last three 000s omitted
 All data reflect direct revenues and costs from "Best's Aggregates and Averages"
 Prior to 1975, Medical Malpractice is included; for 1975-2003 it is excluded
 (6) (2) x (5)

COST OF THE U.S. TORT SYSTEM — 1950-2003

APPENDIX 4

Comparisons of Personal Lines to Commercial Lines Costs and Impact of Self-Insurance

Year	Personal Lines			Commercial Lines			Self- (Un) Insured
	Insured	Self- (Un) Insured	Total	Insured	Self- (Un) Insured	Total	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1973	\$ 8,521,899	2.0%	\$ 8,695,815	\$ 6,099,397	6.0%	\$ 6,488,720	\$ 563,240
1974	8,921,581	2.0	9,103,654	6,916,232	6.0	7,357,694	623,535
1975	10,336,734	2.0	10,547,688	7,578,176	9.0	8,327,665	960,444
1976	11,609,756	2.0	11,846,690	9,077,764	10.0	10,086,405	1,245,574
1977	12,902,054	2.0	13,165,362	11,171,351	14.0	12,989,943	2,081,899
1978	14,381,293	2.0	14,674,789	13,235,295	16.0	15,756,304	2,814,504
1979	15,985,767	2.0	16,312,007	14,949,116	16.9	17,980,958	3,358,083
1980	17,084,039	2.0	17,432,692	16,973,905	22.4	21,860,944	5,235,693
1981	18,892,570	2.0	19,278,133	20,037,210	22.6	25,897,553	6,245,906
1982	20,828,903	2.0	21,253,983	23,609,190	22.9	30,616,810	7,432,699
1983	22,945,067	2.0	23,413,333	27,001,563	23.3	35,210,231	8,676,935
1984	25,615,607	2.0	26,138,375	25,593,130	24.8	34,037,149	8,966,786
1985	29,695,287	2.0	30,301,313	34,760,369	25.5	46,638,495	12,484,152
1986	34,460,827	2.0	35,164,110	43,706,759	26.7	59,630,991	16,627,514
1987	38,092,590	2.0	38,869,990	47,019,592	26.9	64,330,038	18,087,846
1988	41,783,652	2.0	42,636,380	46,679,161	26.8	63,751,737	17,925,304
1989	46,424,500	2.0	47,371,939	50,605,870	28.0	70,297,668	20,639,237
1990	50,967,722	2.0	52,007,879	49,634,954	28.0	68,952,159	20,357,363
1991	52,338,179	2.0	53,406,306	48,677,963	28.6	68,131,990	20,522,153
1992	55,274,662	2.0	56,402,716	51,378,237	29.8	73,166,079	22,915,896
1993	56,164,851	2.0	57,311,072	52,395,666	29.6	74,376,917	23,127,472
1994	58,857,222	2.0	60,058,389	53,185,609	29.4	75,292,080	23,307,639
1995	60,222,560	2.0	61,451,592	58,255,497	30.3	83,629,186	26,602,720
1996	61,414,886	2.0	62,668,251	53,947,707	30.6	77,762,576	25,068,233
1997	62,097,411	2.0	63,364,705	51,464,302	31.3	74,964,151	24,767,144
1998	64,995,727	2.0	66,322,170	56,432,639	31.6	82,480,623	27,374,427
1999	66,807,453	2.0	68,170,870	56,056,333	31.7	82,032,197	27,339,281
2000	70,866,341	2.0	72,312,592	58,662,514	32.7	87,171,504	29,955,242
2001	75,245,057	2.0	76,780,671	70,932,643	33.6	106,850,923	37,453,893
2002	78,405,888	2.0	80,006,008	87,435,769	32.1	128,760,109	42,924,460
2003	82,522,939	2.0	84,207,081	91,350,946	32.3	135,000,048	45,333,244

Notes

Last three 000s omitted

(2), (5) From "Best's Aggregates and Averages" (excludes Medical Malpractice)

(3) Based on internal Tillinghast interviews

(4) (2) / [(1.0 - (3))]

(6) Based on various studies estimating the size of the self-insured market and estimates by Tillinghast

(7) (5) / [(1.0 - (6))]

(8) [(4) - (2)] + [(7) - (5)]

MEDICAL MALPRACTICE TORT COSTS

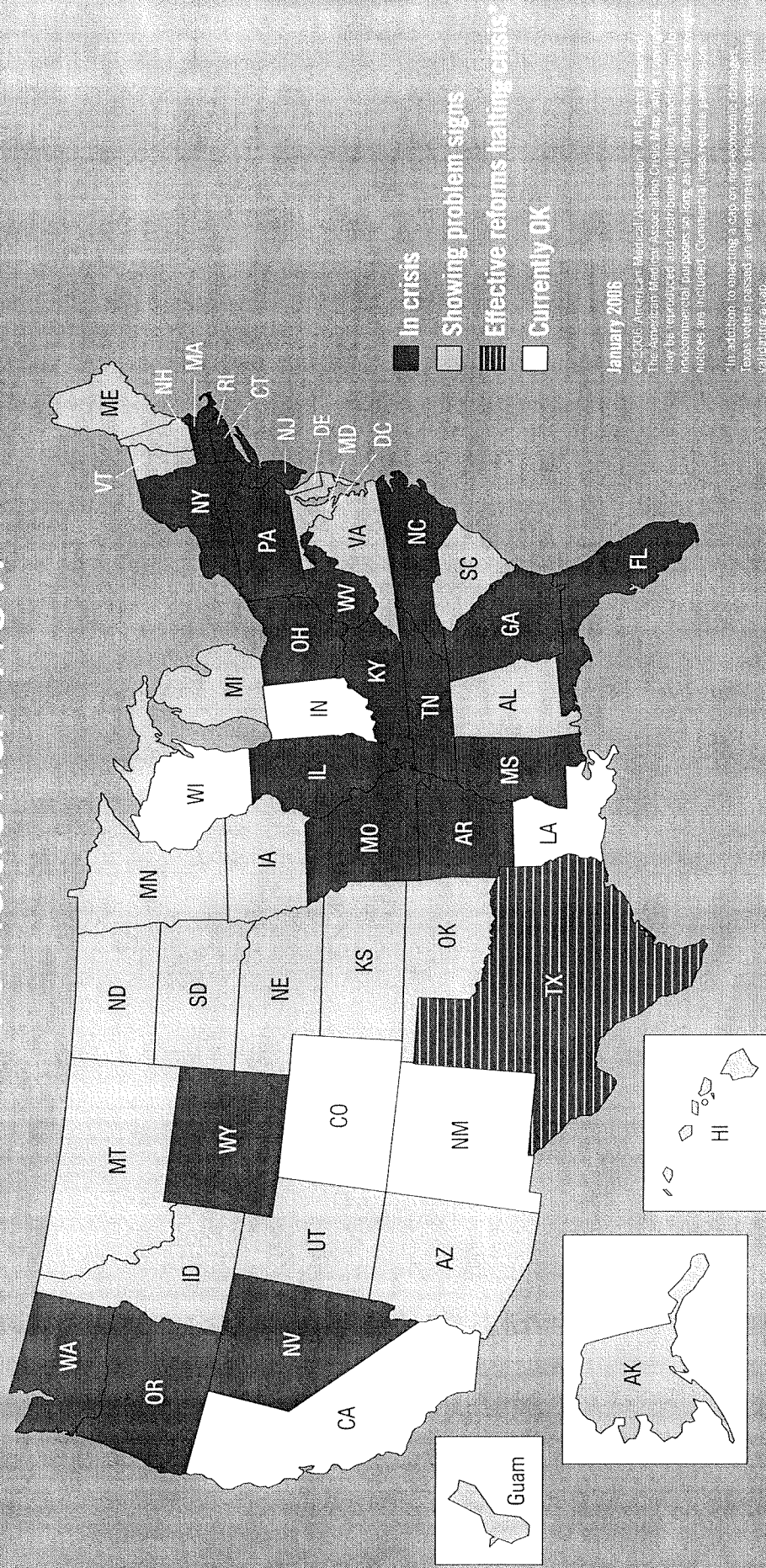
APPENDIX 5

Year (1)	Loss and LAE Costs			Total (5)	U/W Expense Ratio (6)	Total Cost (7)
	Hospital (2)	Physicians (3)	Other (4)			
1975	\$ 378,619	\$ 554,171	\$ 83,951	\$ 1,016,742	12.2	\$ 1,158,476
1976	465,814	680,949	107,337	1,254,100	11.7	1,420,786
1977	567,845	875,367	140,488	1,583,700	12.6	1,811,894
1978	690,917	1,084,047	179,693	1,954,658	12.8	2,241,760
1979	848,193	1,363,543	232,868	2,444,605	11.0	2,745,213
1980	1,051,838	1,690,090	300,238	3,042,166	9.9	3,376,381
1981	1,290,927	1,998,159	374,557	3,663,643	9.9	4,065,717
1982	1,576,183	2,350,909	465,101	4,392,193	9.3	4,845,214
1983	1,890,801	2,772,834	574,426	5,238,060	9.7	5,802,016
1984	2,181,499	3,272,719	698,675	6,152,893	9.1	6,768,896
1985	2,129,009	3,418,252	710,593	6,257,854	7.2	6,740,227
1986	2,175,976	3,433,666	718,584	6,328,226	8.2	6,892,127
1987	2,268,904	3,581,822	749,467	6,600,193	9.8	7,314,182
1988	2,363,708	3,757,656	784,135	6,905,499	9.4	7,622,786
1989	2,456,483	4,013,665	828,813	7,298,961	14.1	8,498,791
1990	2,572,981	4,468,082	901,947	7,943,010	13.7	9,202,873
1991	2,692,628	4,966,450	981,113	8,640,192	14.3	10,077,004
1992	2,841,396	5,481,304	1,066,122	9,388,822	12.0	10,664,402
1993	2,967,300	5,863,791	1,131,246	9,962,337	14.4	11,635,903
1994	3,049,164	6,322,753	1,200,524	10,572,441	16.5	12,668,947
1995	3,162,980	6,796,529	1,288,552	11,248,061	16.3	13,441,955
1996	3,284,839	7,364,371	1,391,562	12,040,772	15.7	14,290,605
1997	3,481,942	7,917,420	1,504,483	12,903,845	17.6	15,666,686
1998	3,658,590	8,656,884	1,641,645	13,957,119	16.5	16,712,698
1999	3,997,582	9,528,191	1,821,007	15,346,779	15.1	18,080,438
2000	4,393,333	10,579,339	2,035,964	17,008,636	13.7	19,712,900
2001	4,904,910	12,093,338	2,334,513	19,332,761	11.7	21,902,829
2002	5,559,553	13,437,948	2,635,178	21,632,680	11.4	24,403,678
2003	5,963,951	14,787,711	2,878,501	23,630,163	11.0	26,536,754

Notes Last three 000s omitted
 (2), (3), (4) From internal Tillinghast study
 (5) (2) + (3) + (4)
 (6) From "Best's Aggregates and Averages"; the ratio of underwriting expenses to all losses and expenses combined, multiplied by 0.90 to reflect lower costs in alternative market
 (7) (5) / [1.0 - (6)]

America's medical liability crisis:

A national view



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Impact of Tort Reform

TEXAS: Tort Reform Spurs Economic Growth; Aids Access to Healthcare

In 2003, the Texas state Legislature passed H.B. 4 to further reform the state's civil justice system. The bill addressed issues such as: limits on noneconomic damages; product liability reform; punitive damages; medical liability reform joint and several liability; and class action reform. Voters also approved a constitutional amendment, Proposition 12, in 2003, which eliminates potential court challenges to the law that limited noneconomic damages to \$750,000. Since the enactment of H.B. 4 and the subsequent passage of Proposition 12, Texas has made great strides in growing its economy and providing jobs and accessible healthcare to its citizens.

Success in the business community:

- Texas was awarded the 2004 Governor's Cup award for the largest number of job creation announcements (Site Selection Magazine, 3/05).
- Texas also was selected as the state with the best business climate in the nation by Site Selection Magazine (Site Selection Magazine, 3/05).

Successes in the medical community:

- The American Medical Association dropped Texas from its list of states in medical liability crisis (Houston Chronicle, 5/17/05).
- Malpractice claims are down and physician recruitment and retention are up, particularly in high risk specialties (Houston Chronicle, 5/17/05).
- The five largest Texas insurers cut rates, which will save doctors about \$50 million, according to the AMA (Houston Chronicle, 5/17/05).
- Malpractice lawsuits in Harris County have dropped to about half of what they were in 2001 and 2002. There were 204 cases filed in 2004, compared with 441 in 2001 and 550 in 2002. There were 1,154 lawsuits filed in 2003, attributed to attorneys trying to file before the new law took effect (Houston Chronicle, 5/17/05).
- Harris County has seen a net gain of 689 physicians, an 8.4 percent increase, according to the Texas State Board of Medical Examiners (Houston Chronicle, 5/17/05).
- Texas Medical Liability Trust, the state's largest liability carrier, reduced its premiums by 17 percent (Houston Chronicle, 5/17/05).
- Fifteen new insurance companies have entered the Texas market (Associated Press, 2/16/05).
- Health Care Indemnity, the state's largest carrier for hospitals, cut rates by 15 percent in 2004 (Associated Press, 2/16/05).

Impact of Tort Reform (continued)

MISSISSIPPI: Tort Reform Already Achieving Desired Results

In a 2004 legislative special session called by Governor Haley Barbour, the Mississippi Legislature passed H.B. 13, which included reforms relating to: product liability; joint and several liability; jury service; medical liability; and noneconomic damages. Improvements in the state's economy and healthcare system already are being demonstrated since the law took effect on Sept. 1, 2004.

Successes in the business community:

Businesses have made new investments in the state starting in 2004. These include:

- \$35 million investment by Textron
- \$3.5 million payroll by Winchester Ammunition
- \$1.8 billion expansion by Fed Ex Ground
- \$20 million investment by Kingsford Charcoal (The Clarion-Ledger, 2/27/05).

Successes in the medical community:

- The Medical Assurance Company of Mississippi (MACM), which provides medical malpractice insurance to about 70 percent of doctors in the state, announced a 5-percent decrease in premiums for 2006 (The Natchez Democrat, 10/19/05). MACM did not raise base premiums in 2004 or 2005, and previously had been raising rates annually up to 20 percent (Associated Press, 9/24/04).
- Mass Mutual Insurance Group, St. Paul Travelers, World Insurance Company, and Equitable Life Insurance Company are returning to Mississippi (The Clarion-Ledger, 2/27/05).

TORT REFORM AT A GLANCE: Other States Begin to Make Strides

Missouri

Expansion Management, a monthly business magazine, ranked Missouri, which recently passed comprehensive tort reform, as one of the leading states in the nation for having a business friendly climate that attracts industry and new jobs. Missouri, along with Ohio and Virginia, each had five metro areas earning top honors (Jefferson City News Tribune, 6/23/05).

New Jersey

In 1995, the state legislature passed the Affidavit of Merit Statute. The law provides that in any suit alleging professional malpractice or negligence, 'the plaintiff shall, within 60 days following the date of the filing of the answer to the complaint by the defendant, provide each defendant with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in

Impact of Tort Reform (continued)

the treatment, practice or work that is the subject of the complaint fell outside acceptable professional or occupational standards or treatment practices.

Enactment of the law coincides with a measured drop in the number of medical malpractice suits filed. In 2004, 1,493 medical malpractice suits were filed, a 24 percent decrease from 1997 when 1,971 suits were filed. 1997 is the earliest year for which data is available from the state Administrative Office of the Court (New Jersey Law Journal, 6/13/05).

West Virginia

After passing tort reform measures in 2003 that included a \$250,000 cap on noneconomic damages, West Virginia has seen an increase in the number of new physicians in the state. According to the West Virginia Board of Medicine, 377 new physicians were licensed to the state in 2004, the most since 391 were licensed in 1999. The state previously had hit a low point with 305 new licenses in 2000 (The Heartland Institute, 5/1/05).

West Virginia Physician's Mutual, the state's largest medical malpractice insurer has added 100 new doctors who had previously left West Virginia to its membership rolls. In addition, the company has applied in 2005 for a 5 percent reduction in premiums physicians pay for malpractice coverage. The president credits the reduced premiums and the addition of doctors to medical malpractice reforms that have been passed since 2001 (Charleston Gazette, 8/20/05).

Woodbrook Casualty Insurance, the state's largest private malpractice coverage provider serving about 250 doctors, sought a 3.9 percent rate decrease in 2005. The request must go to the state Insurance Commission for approval (Charleston Gazette, 8/20/05).



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MICHIGAN SUPREME COURT A RECORD OF UPHOLDING TORT REFORM

Grieb v. Alpine Valley Ski Area, Inc., 400 N.W.2d 653 (Mich. App. 1986) (statutory tort immunity for ski area operators did not violate equal protection or due process provisions of State or Federal Constitutions), *appeal denied*, 428 Mich. 864 (Mich. 1987).

Heinz v. Chicago Road Inv. Co., 549 N.W.2d 47 (Mich. App. 1996) (statute providing for admissibility of collateral source payments in personal injury actions did not constitute unconstitutional taking of property and did not violate equal protection or right to jury trial provisions of State Constitution), *appeal denied*, 567 N.W.2d 250 (Mich. 1997).

Kenkel v. Stanley Works, 665 N.W. 2d 490 (Mich. App. 2003) (cap limiting noneconomic loss recoveries in product liability actions to \$280,000 and \$500,000 for death or permanent loss of a vital bodily function did not violate the right to jury trial, separation of powers, or prohibition against special legislation provisions of the State Constitution, or the due process or equal protection provisions of the State or Federal Constitutions, and did not infringe on the Court's rulemaking authority); *Wessels v. Garden Way, Inc.*, 689 N.W.2d 526 (Mich. App. 2004) (same).

McDougall v. Schanz, 597 N.W.2d 148 (Mich. 1999) (statute establishing standards for the qualification of experts in medical malpractice cases did not infringe on Court's constitutional rulemaking authority over practice and procedure).

Phillips v. Mirac, Inc., 685 N.W.2d 174 (Mich. 2004) (statute capping vicarious liability of auto lessors did not violate the right to jury trial, due process, or equal protection provisions of the State Constitution).

Taylor v. Smithkline Beecham Pharmaceuticals, 658 N.W.2d 127 (Mich. 2003) (statute providing tort immunity to manufacturers of FDA-approved drugs not an unconstitutional delegation of legislative authority to a foreign agency).

Zdrojewski v. Murphy, 657 N.W.2d 721 (Mich. App. 2002) (cap limiting noneconomic loss recoveries in medical malpractice actions to \$280,000 and \$500,000 for certain claims did not violate the right to jury trial or separation of powers provisions of the State Constitution, or the equal protection provisions of the State or Federal Constitutions, and did not infringe on the Court's rulemaking authority) (disagreed with by *Wiley v. Henry Ford Cottage Hosp.*, 668 N.W.2d 402 (Mich. App. 2003), *appeal denied*, 678 N.W.2d 439 (Mich. 2004)); *Jenkins v. Patel*, 688 N.W.2d 543 (Mich. App. 2004) (same).



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TORT REFORM LAWS HOLD UNCONSTITUTIONAL BY STATE SUPREME COURTS AFTER 1983

ALABAMA

Armstrong v. Roger's Outdoor Sports, Inc., 581 So. 2d 414 (Ala. 1991) (law declaring that no presumption of correctness as to the amount of a punitive damages award applied in either the trial or appellate court violated separation of powers provision of State Constitution).

Lloyd Nolan Hosp. v. Durham, 906 So. 2d 157 (Ala. 2005) (statute allowing for periodic payments of personal injury awards over \$150,000 violated right to jury trial provision of State Constitution); *Clark and Halliburton Indus. Servs. Div. v. Container Corp. of Am.*, 589 So. 2d 184 (Ala. 1991) (same).

Gaines v. Huntsville-Madison County Airport Auth., 581 So. 2d 444 (Ala. 1991) (statute giving airport authorities in counties with populations in excess of 110,000 persons immunity from all tort actions, whereas other airport authorities are immune only from negligence actions, denied equal protection under State Constitution).

Jackson v. Mannesmann Demag Corp., 435 So. 2d 725 (Ala. 1983) (statute of repose regarding improvements to real property violated open courts provision of State Constitution).

Moore v. Mobile Infirmary Assoc., 592 So. 2d 156 (Ala. 1991) (statute setting \$400,000 limit on noneconomic damages awards in health care liability actions violated right to jury trial and equal protection provisions of State Constitution). *But see Mobile Infirmary Med. Center v. Hodgen*, 884 So. 2d 801 (Ala. 2003) (noting erosion of support for the *Moore* decision but declining to revisit the opinion because the Legislature had, subsequent to *Moore*, chosen to enact a new law capping punitive damages at the greater of three times compensatory damages or \$1.5 million rather than adopt limits on both noneconomic and punitive damages awards).

ALASKA

Turner Const. Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988) (six-year statute of repose on suits filed against design professionals violated equal protection under the State Constitution).

ARIZONA

AA Mechanical v. Superior Ct., 948 P.2d 492 (Ariz. App. 1997) (statute requiring plaintiff asserting claim against registered professional or contractor to submit expert affidavit with claim unconstitutionally infringed on right to remedy provision of State constitution); *Hunter Contracting Co. v. Superior Ct.*, 947 P.2d 892 (Ariz. App. 1997) (same).

Anson v. Am. Motors Co., 747 P.2d 581 (Ariz. App. 1987) (two-year statute of limitations for wrongful death actions, with accrual at time of death, violated equal protection and right to remedy provisions of State Constitution).

Barrio v. San Manuel Div. Hosp. For Magma Copper Co., 692 P.2d 280 (Ariz. 1984) (statute of limitations which required minor injured when below age of seven to bring action for medical malpractice by the time she reached age ten violated right to remedy provision of State Constitution).

Boswell v. Phoenix Newspapers, Inc., 730 P.2d 186 (Ariz. 1986) (statute which provided in effect that a media defamation defendant was liable only for special damages after retraction violated "anti-abrogation" provision of State Constitution), *cert. denied*, 481 U.S. 1029 (1987).

Hazine v. Montgomery Elev. Co., 861 P.2d 625 (Ariz. 1993) (twelve-year product liability statute of repose violated "anti-abrogation" provision of State Constitution), *declined to extend*, *Cronin v. Sheldon*, 991 P.2d 231, 239 (Ariz. 1999) (strictly statutory causes of action are not within the *Hazine* doctrine).

Kenyon v. Hammer, 688 P.2d 961 (Ariz. 1984) (three-year statute of limitations for wrongful death claim violated equal protection provision of State Constitution).

Young v. DFW Corp., 908 P.2d 1 (Ariz. App. 1995) (statute limiting dramshop liability to instances where alcohol was served to "obviously intoxicated" patron, as statutorily defined, deprived plaintiff of general negligence cause of action in violation of State Constitutional prohibition against abrogation of right of action to recover damages for injuries).

COLORADO

Austin v. Litvak, 682 P.2d 41 (Colo. 1984) (three-year statute of repose in medical malpractice actions violated equal protection provision of State Constitution insofar as the statute applied to persons whose claims were based on negligent misdiagnosis).

Kirk v. Denver Pub. Co., 818 P.2d 262 (Colo. 1991) (law requiring plaintiff to pay one-third of any punitive damages award collected to the State general fund was an unconstitutional taking of property without just compensation under both the Federal and State Constitutions).

FLORIDA

Owens-Corning Fiberglass Corp. v. Corcoran, 679 So. 2d 291 (Fla. App. 1996) (application of former statute of repose to latent asbestos injury violated access to courts provision of State Constitution), *cert. denied*, 690 So.2d 1300 (Fla. 1997).

Nationwide Mut. Fire Ins. Co. v. Pinnacle Med., Inc., 753 So. 2d 55 (Fla. 2000) (mandatory arbitration under motor vehicle no-fault statute violated access to courts provision of State Constitution and attorney-fee provision violated due process under State Constitution).

Smith v. Dept. of Ins., 507 So. 2d 1080 (Fla. 1987) (statute setting \$450,000 limit on noneconomic damages awards violated access to courts provision of State Constitution).

GEORGIA

Celotex Corp. v. St. Joseph Hosp., 376 S.E.2d 880 (Ga. 1989) (statute providing for revival or extension of actions against asbestos manufacturers violated equal protection provision of State Constitution).

Denton v. Con-Way S. Express, Inc., 402 S.E.2d 269 (Ga. 1991) (statute authorizing admission of collateral sources of recovery available to plaintiffs seeking special damages for tortious injury violated State Constitutional requirement of impartial and complete protection to person and property), *modified by Amalgamated Transit Union Local 1324 v. Roberts*, 434 S.E.2d 450, 551 n.1 (Ga. 1993) ("Although *Denton* was subsequently disapproved 'to the extent that it suggests a new Equal Protection analysis, it was not disapproved to the extent it declared OCGA § 51-12-1(b) to be unconstitutional'").

EHCA Cartersville, LLC v. Turner, -- S.E.2d --, 2006 WL 316818 (Ga. Feb. 13, 2006) (venue reform provision of Tort Reform Act of 2005 violated joint tortfeasor provision of State Constitution).

Muenster v. Suh, 2005 WL 2476223 (Ga. Super. 2005) (offer of judgment provision of tort reform legislation violated access to courts, prohibition against special legislation, equal protection, retroactivity, and right to jury trial provisions of State Constitution).

ILLINOIS

Bernier v. Burris, 497 N.E.2d 763 (Ill. 1986) (statute requiring pretrial submission of medical malpractice claims to panel consisting of a circuit judge, a practicing attorney, and a physician violate separation of powers provision of State Constitution).

Best v. Taylor Mach. Works, Inc., 689 N.E.2d 1057 (Ill. 1997) (overturning Civil Justice Reform Amendments of 1995 in their entirety by finding that \$500,000 limit on noneconomic damages award violated State Constitutional prohibition against special legislation and separation of powers provision of the State Constitution; amendments to the Joint Tortfeasor Contribution Act were arbitrary and

unconstitutional; abolition of joint liability violated State Constitutional prohibition against special legislation; and access to medical records provision violated separation of powers and right to privacy provisions of State Constitution; the invalid provisions were nonseverable from the rest of the statute; therefore, the entire Act was held to be unconstitutional).

Hurst v. Capital Cities Media, Inc., 754 N.E.2d 429 (Ill. App. 2001) (provision of Civil Justice Reform Amendments of 1995 permitting multiple refilings following voluntary dismissals based on Illinois Supreme Court's holding in *Best* to declare the 1995 Amendments unconstitutional in their entirety), *cert. denied*, 763 N.E.2d 770 (Ill. 2001).

Kunkel v. Walton, 689 N.E.2d 1047 (Ill. 1997) (provision of Civil Justice Reform Amendments of 1995 regarding access to medical records held to violate separation of powers and right to privacy under State Constitution).

INDIANA

Martin v. Richey, 711 N.E.2d 1273 (Ind. 1999) (two-year occurrence-based statute of limitations as applied to plaintiff was an unconstitutional violation of the privileges and immunities and open courts provisions of the State Constitution); *Van Dusen v. Stotts*, 712 N.E.2d 491 (Ind. 1999) (same); *Harris v. Raymond*, 715 N.E.2d 388 (Ind. 1999) (same); *Boggs v. Tri-State Radiology, Inc.*, 730 N.E.2d 692 (Ind. 2000) (same). *But see Jacobs v. Manhart*, 770 N.E.2d 344 (Ind. App. 2002) (statute violated open courts and equal privileges and immunities provisions of the state constitution as applied to claims discovered shortly before the expiration of the limitation period).

KANSAS

Ernest v. Faler, 697 P.2d 870 (Kan. 1985) (statute requiring persons damaged from pesticide application to file a written Statement with the county attorney within sixty days after the date of damage was discovered in order to maintain a civil action to recover damages violated equal protection and due process under the State and Federal Constitutions).

Farley v. Engelken, 740 P.2d 1058 (Kan. 1987) (abrogation of collateral source rule in health care liability actions denied equal protection under the State Constitution); *Wentling v. Med. Anesthesia Servs., P.A.*, 701 P.2d 939 (Kan. 1985) (repealed predecessor statute held to violate equal protection provision of State Constitution).

Kansas Malpractice Victims Coalition v. Bell, 757 P.2d 251 (Kan. 1988) (Kansas Health Care Provider Insurance Availability Act provisions setting \$1 million limit on aggregate damages in health care liability actions and provision requiring annuity for payments for future economic loss in all health care liability actions violated right to jury trial under State Constitution), *overruled in part on other grounds*, *Bair v. Peck*, 811 P.2d 1176 (Kan. 1991).

Thompson v. KFB Ins. Co., 850 P.2d 773 (Kan. 1993) (statute allowing evidence of collateral source benefits where claimant demands judgment for damages in excess of \$150,000 violated equal protection provision of State Constitution).

KENTUCKY

McCollum v. Sisters of Charity of Nazareth Health Corp., 799 S.W.2d 15 (Ky. 1990) (five-year statute of repose for health care liability actions violated open courts provision of State Constitution).

O'Bryan v. Hedgespeth, 892 S.W.2d 571 (Ky. 1995) (statute allowing admission of evidence of collateral source payments in personal injury actions violated separation of powers provision of State Constitution).

Perkins v. Northeastern Log Homes, 808 S.W.2d 809 (Ky. 1991) (seven-year statute of repose for improvements to real property violated State Constitutional prohibition against "special legislation" and, according to the court, any remedial legislation would violate provisions in the State Constitution providing for open courts and limits on the power of the legislature).

Tabler v. Wallace, 704 S.W.2d 179 (Ky. 1985) (five-year statute of repose for real property improvements predating statute of repose found unconstitutional in *Perkins* held to violate State Constitutional prohibition against special legislation), *cert. denied*, 479 U.S. 822 (1986).

Williams v. Wilson, 972 S.W.2d 260 (Ky. 1998) (1988 punitive damages reform statute requiring a plaintiff to show that the defendant acted with "flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in human death or bodily harm" as a predicate for punitive damages liability violated "jural rights" provisions of State Constitution).

LOUISIANA

Bourgeois v. A.P. Green Indus., Inc., 783 So.2d 1251 (La. 2001) (holding that Louisiana's statute abolishing medical monitoring causes of action cannot be applied retroactively because it would deprive plaintiffs of a previously vested right).

MISSOURI

Strahler v. St. Luke's Hosp., 706 S.W.2d 7 (Mo. 1986) (statute of limitations for health care liability actions violated access to courts provision of State Constitution insofar as the statute applied to minors).

MONTANA

Brewer v. Ski-Lift, Inc., 762 P.2d 226 (Mont. 1988) ("skier responsibility" statute providing tort immunity to ski area operators violated equal protection provision of State Constitution).

Newville v. Montana Dept. of Family Servs., 883 P.2d 793 (Mont. 1994) (portions of 1987 comparative negligence statute allowing fault to be allocated to nonparties violated due process provision of State Constitution).

Truman v. MT Eleventh Jud. Dist., 68 P.3d 654 (2003) (declaring joint and several liability statutes unconstitutional to the extent they permitted a defendant's negligence to be compared with the negligence of parties released from the action by a plaintiff.); *Plumb v District Court*, 927 P.2d 1011 (Mont. 1996).

NEW HAMPSHIRE

Brannigan v. Usitalo, 587 A.2d 1232 (N.H. 1991) (statute limiting recovery for noneconomic loss to \$875,000 in personal injury actions violated equal protection provision of State Constitution).

Heath v. Sears, Roebuck & Co., 464 A.2d 288 (N.H. 1983) (twelve-year statute of repose and three-year statute of limitations for product liability actions violated equal protection provision of State Constitution).

Trovato v. DeVeau, 736 A.2d 1212 (N.H. 1999) (statute limiting damages in wrongful death cases to \$50,000 where the decedent was not survived by a family member violated equal protection provision of State Constitution).

NEW MEXICO

Board of Educ. Of Carlsbad Munic. Schools v. Harrell, 882 P.2d 511 (N.M. 1994) (limited judicial review provided by statute mandating arbitration of school board discharge decisions violated due process and separation of powers provisions of State Constitution).

Jaramillo v. Heaton, 100 P.3d 204 (N.M. App.) (provision of Medical Malpractice Act requiring a minor who experiences malpractice before the age of six to bring a claim under the Act by his or her ninth birthday violated discharge decisions violated due process under the State and Federal Constitutions), *cert. denied*, 101 P.3d 807 (N.M. 2004).

Lisanti v. Alamo Title Ins. Of Tex., 55 P.3d 962 (N.M. 2002) (regulation requiring mandatory arbitration of all title insurance claims under \$1 million violated right to jury trial provision of State Constitution), *cert., denied*, 537 U.S. 1193 (2003).

NORTH CAROLINA

Anderson v. Assimios, 553 S.E.2d 63 (N.C. App. 2001) (rule requiring plaintiff to make particular certifications in medical malpractice actions violated access to courts and equal protection provisions of State Constitution), *vacated on other grounds*, 572 S.E.2d 101 (N.C. 2002).

Payne v. Charlotte Heating & Air Conditioning, 616 S.E.2d 356 (N.C. App. 2005) (workers' compensation statute that required claims for death benefits for asbestos or silica exposure to be brought within two years of last exposure when time limit for claims for all other occupational diseases was

triggered by the final determination of the disability violated equal protection under State and Federal Constitutions).

Walters v. Algernon Blair, 462 S.E.2d 232 (N.C. App. 1995), *aff'd per curiam*, 476 S.E.2d 105 (N.C. 1996), *cert. denied*, 520 U.S. 1196 (1997) (workers' compensation statute that denied benefits to workers suffering from asbestosis or silicosis unless worker has been exposed to asbestos or silica for at least two of the preceding ten years violated equal protection under State and Federal Constitutions).

NORTH DAKOTA

Dickie v. Farmers Union Oil Co., 611 N.W.2d 168 (N.D. 2000) (product liability statute of repose that ran from 10 years after initial purchase or 11 years from date of manufacture of the product violated equal protection under the State Constitution).

Hanson v. Williams County, 389 N.W.2d 319 (N.D. 1986) (ten-year product liability statute of repose violated equal protection under the State Constitution).

OHIO

Adamsky v. Buckeye Local School Dist., 653 N.E.2d 212 (Ohio 1995) (two-year statute of limitations for personal injury actions against political subdivisions violated equal protection provisions of State and Federal Constitutions, as applied to minors).

Brady v. Safety-Kleen Corp., 576 N.E.2d 722 (Ohio 1991) (statute governing claims against employers for intentional torts violated workers' compensation provision of State Constitution); *Johnson v. BP Chem., Inc.*, 707 N.E.2d 1107 (Ohio 1999) (revised legislation to address *Brady* decision also violated State Constitution).

Brenneman v. R.M.I. Co., 639 N.E.2d 425 (Ohio 1994) (ten-year statute of repose for improvements to real property violated right to remedy provision of State Constitution) (overruling *Sedar v. Knowlton Construction Co.*, 551 N.E.2d 938 (Ohio 1990)); *Cyrus v. Henes*, 640 N.E.2d 810 (Ohio 1994) (remanded to the trial court on the authority of *Brenneman*); *Ross v. Tom Rieth, Inc.*, 645 N.E.2d 729 (Ohio 1995) (same).

Burgess v. Eli Lilly and Co., 609 N.E.2d 140 (Ohio 1993) (statute of limitations for DES-related injuries violated right to remedy provision and due process provisions of State Constitution).

Crowe v. Owens Corning Fiberglas, 718 N.E.2d 923 (Ohio 1999) (limitation on punitive damages violated jury trial provision of State Constitution).

Gaines v. Preterm-Cleveland, Inc., 514 N.E.2d 709 (Ohio 1987) (health care liability statute of repose violated equal protection provision of State Constitution as applied to adult litigants who, following discovery, did not have adequate time to file actions).

Galayda v. Lake Hosp. Sys., Inc., 644 N.E.2d 298 (Ohio 1994) (statute requiring periodic payments of future damages awards in medical malpractice suits violated right to jury trial and due process provisions of State Constitution), *reconsideration denied*, 644 N.E.2d 1389 (Ohio), *cert. denied sub nom. Damian v. Galayda*, 516 U.S. 810 (1995).

Gladon v. Greater Cleveland Regional Transit Auth., 1994 WL 78468 (Ohio App. Mar. 10, 1994) (unreported) (\$250,000 limit on noneconomic damages awards violated right to jury trial and equal protection provisions of State Constitution), *rev'd on other grounds*, 662 N.E.2d 287 (Ohio 1996).

Hardy v. VerMeulen, 512 N.E.2d 626 (Ohio 1987) (statute barring health care liability claims brought more than four years after act or omission constituting alleged malpractice occurred, as applied to bar claims of health care liability plaintiffs who did not know or could not have known of their injuries, violated right to remedy provision of State Constitution), *cert. denied*, 484 U.S. 1066 (1988).

Hiatt v. Southern Health Facilities, Inc., 626 N.E.2d 71 (Ohio 1994) (statute requiring certificates of merit in health care liability actions conflicted with court-promulgated Ohio Rules of Civil Procedure and was invalid and of no force and effect).

In re Lay, 619 N.E.2d 1196 (Ohio Ct. Cl. 1991) (Crime Victims Compensation Act's statute of limitations violated due course of law and open court provisions of State Constitution as applied to minors).

Modzelewski v. Yellow Freight Sys., Inc., 808 N.E.2d 381 (Ohio 2004) (statute providing that employer's rights are automatically subrogated to employee's rights in litigation against a third-party tortfeasor violated due process, equal protection, and right against taking of property without compensation provisions of State Constitution); *Holeton v. Crouse Cartage Co.*, 748 N.E.2d 1111 (Ohio 2001) (prior workers' compensation subrogation statute giving the subrogee a current collectible interest in estimated future expenditures violated due process, right to private property, and equal protection provisions of State Constitution).

Mominee v. Scherbarth, 503 N.E.2d 717 (Ohio 1986) (statute which required health care liability actions to be brought within one year from date cause of action accrued, or four years from date alleged malpractice occurred, whichever came first, violated due process provision of State Constitution insofar as the statute applied to minors).

Morris v. Savoy, 576 N.E.2d 765 (Ohio 1991) (\$200,000 limit on general damages in health care liability actions violated due process provision of State Constitution, but did not violate equal protection provision of State Constitution).

State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999) (comprehensive 1996 tort reform law violated doctrine of separation of powers and one-subject provision of State Constitution).

Rockey v. 84 Lumber Co., 611 N.E.2d 789 (Ohio 1993) (statute prohibiting plaintiffs from specifying amount of monetary damages in complaint when damages sought are in excess of \$25,000 conflicted with Ohio Rules of Civil Procedure, which were promulgated by the Ohio Supreme Court pursuant to the State Constitution, and was invalid and of no force and effect).

Schwan v. Riverside Methodist Hosp., 452 N.E.2d 1337 (Ohio 1983) (statute of limitations for health care liability actions, as it applied to minors, violated equal protection provision of State Constitution).

Sorrell v. Thevenir, 633 N.E.2d 504 (Ohio 1994) (statute providing offset of collateral source benefits received by plaintiff violated right to jury trial, due process, equal protection, right to open courts, and right to meaningful recovery provisions of State Constitution); *Samuels v. Coil Bar Corp.*, 579 N.E.2d 558 (Ohio Cm. Pl. 1991) (same as applied to wrongful death actions).

Zoppo v. Homestead Ins. Co., 644 N.E.2d 397 (Ohio 1994) (statute providing for amount of punitive damages to be determined by court violated right to jury trial under State Constitution), *reconsideration denied*, 644 N.E.2d 1389 (Ohio 1995), *cert. denied*, 516 U.S. 809 (1995).

OREGON

Lakin v. Senco Prods., Inc., 987 P.2d 463 (Or. 1999) (\$500,000 limit on noneconomic damages in personal injury and wrongful death actions arising out of common law violated right to jury trial provision of State Constitution).

Smothers v. Gresham Transfer, Inc., 23 P.3d 333 (Or. 2001) (exclusive remedy provision of workers' compensation statute violated right to remedy provision of state constitution, as applied to employee; holding that legislation cannot abolish or alter absolute rights that existed when the state constitution was drafted without violating the right to a remedy) (abrogating *Sealey v. Hicks*, 788 P.2d 435 (Or.) (eight-year products liability statute of repose did not violate provisions of State Constitution granting remedy by due course of law, trial by jury, and equal entitlement to privileges and immunities, and did not violate equal protection under the State or Federal Constitutions), *cert. denied*, 498 U.S. 819 (1990)).

PENNSYLVANIA

DeWeese v. Weaver, 880 A.2d 54 & 824 A.2d 364 (Pa. Cmwlth. 2005) (joint liability reform amendment violated single subject rule of State Constitution).

Ieropoli v. AC & S Corp., 842 A.2d 919 (Pa. 2004) (asbestos-related successor liability law violated open courts provision of State Constitution).

RHODE ISLAND

Boucher v. Sayeed, 459 A.2d 87 (R.I. 1983) (statute creating system for processing of medical malpractice complaints violated equal protection provision of Federal Constitution).

Kennedy v. Cumberland Eng'g Co., Inc., 471 A.2d 195 (R.I. 1984) (ten-year statute of repose for product liability actions held to violate access to courts provision of State Constitution).

SOUTH DAKOTA

Knowles v. United States, 544 N.W.2d 183 (S.D. 1996) (\$1 million aggregate limit on damages in health care liability actions violated due process under State Constitution, but more limited statute capping noneconomic damages awards in health care liability actions at \$500,000 remained in effect) -- *opinion superceded by statute*, see S.D. CODIFIED LAWS § 21-3-11.1 (1997); *Peterson ex. rel. Patterson v. Burns*, 635 N.W.2d 556 (S.D. 2001).

TEXAS

Lucas v. United States, 757 S.W.2d 687 (Tex. 1988) (\$500,000 aggregate limit on damages in health care liability actions violated open courts provision of State Constitution).

Moore v. Owens-Corning Fiberglass Corp., No. 97-05359 (Travis Cty., Tex. Nov. 4, 1997) (holding unconstitutional a borrowing statute which allowed Texas courts to apply the appropriate statute of limitations of the home state or country of a nonresident plaintiff as well recent amendments to the Texas forum non conveniens law which sought to override certain exceptions for asbestos).

Nelson v. Krusen, 678 S.W.2d 918 (Tex. 1984) (two-year statute of limitations for medical malpractice actions as applied to plaintiff violated open courts provision of State Constitution); *Sax v. Votteler*, 648 S.W.2d 661 (Tex. 1983) (predecessor statute violated due process guarantee set forth in open courts provision of State Constitution).

UTAH

Berry v. Beech Aircraft Corp., 717 P.2d 670 (Utah 1985) (statute of repose barring product liability claims six years after of purchase or ten years after date of manufacture of product violated access to courts provision of State Constitution).

Condemarin v. Univ. Hosp., 775 P.2d 348 (Utah 1989) (statute limiting amount person could claim against uninsured government entity performing "nonessential government function" violated right to jury trial under State Constitution).

Hales v. Indus. Comm'n of Utah, 854 P.2d 537 (Utah App. 1993) (statute of repose which provided death benefits to dependents only when work-related injury caused death within six years of accident violated open courts provision of State Constitution).

Lee v. Gaufin, 867 P.2d 572 (Utah 1993) (provision of Utah Health Care Malpractice Act subjecting minors to two-year statute of limitations and four-year statute of repose violated uniform operation of the laws provision of the State Constitution).

Sun Valley Water Beds of Utah, Inc. v. Herm Hughes & Son, Inc., 782 P.2d 188 (Utah 1989) (architects and builders statute of repose violated open courts provision of State Constitution); *Horton v. Goldminer's Daughter*, 785 P.2d 1087 (Utah 1989) (same).

WASHINGTON

DeYoung v. Providence Med. Center, 960 P.2d 919 (Wash. 1998) (eight-year statute of repose for medical malpractice actions violated privileges and immunities provision of State Constitution).

Sofie v. Fibreboard Corp., 771 P.2d 711 (Wash. 1989) (variable limit on noneconomic damages awards violated right to trial by jury under State Constitution).

WEST VIRGINIA

Whitlow v. Bd. of Educ. of Kanawha County, 438 S.E.2d 15 (W. Va. 1993) (specific statute of limitations and tolling provision for actions by minors against political subdivisions violated equal protection provision of State Constitution).

WISCONSIN

Ferdon v. Wisconsin Patients Comp. Fund, 701 N.W.2d 440 (Wis. 2005) (\$350,000 cap on noneconomic damages in medical malpractice actions violated equal protection provision of State Constitution).

Kohnke v. St. Paul Fire & Marine Ins. Co., 410 N.W.2d 585 (Wis. App. 1987) (medical malpractice statute of limitations violated right to remedy provision of State Constitution), *aff'd on other grounds*, 424 N.W.2d 191 (Wis. 1988).

Martin v. Richards, 531 N.W.2d 70 (Wis. 1994) (statute retroactively limiting recovery for noneconomic loss to \$1,000,000 in medical liability actions violated due process provisions of State and Federal Constitutions), *reconsideration denied*, 537 N.W.2d 576 (Wis. 1995).

Matthies v. Positive Safety Mfg. Co., 628 N.W.2d 842 (Wis. 2001) (statute retroactively abolishing joint liability for any defendant found to be less than 51% at fault violated due process Provisions of State and Federal Constitutions).

WYOMING

Hoem v. Wyoming, 756 P.2d 780 (Wyo. 1988) (statute requiring medical review panels in health care liability actions violated equal protection provision of State Constitution).

State v. Land Surveyors, 798 P.2d 826 (Wyo. 1990) (statute requiring professional review panels violated equal protection provision of State Constitution).



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National Perspective on Key Tort Reform Issues

	<i>Punitive Damages</i>	<i>Joint & Several Liability</i>	<i>Prejudgment Interest</i>	<i>Collateral Source Rule</i>	<i>Noneconomic Damages</i>	<i>Product Liability</i>	<i>Class Action Reform</i>	<i>Attorney Retention Sunshine</i>	<i>Appeal Bond Reform</i>	<i>Jury Service Reform</i>
Alabama	X			X	◆		X			X
Alaska	X	X	X	X	X					
Arizona	X	X		X						X
Arkansas	X	X						X		
California	X	X				X		X		
Colorado	X	X	X	X	X	X	X	X	X	X
Connecticut		X		X				X	+	
Delaware										
DC										
Florida	X	X		X	X	X			X	
Georgia	X	X	X	◆	X	X	X		X	
Hawaii		X		X	X				X	
Idaho	X	X		X	X				X	
Illinois	◆	X		X	X	◆				
Indiana	X			X		X			X	
Iowa	X	X	X	X		X			X	
Kansas	X			◆	X		X	X	X	
Kentucky	◆	X		X					X	
Louisiana	X	X	X			X	X		X	X
Maine			X	X		X			+	
Maryland					X					X
Massachusetts		X							+	
Michigan		X	X	X	X	X			X	
Minnesota	X	X	X	X	X			X		
Mississippi	X	X			X	X			X	X
Missouri	X	X	X	X	X		X		X	X
Montana	X	X		X	X	X				

◆ Denotes state where reform was struck down as unconstitutional and no additional reforms have been enacted.

+ Denotes state where appeal bond is not required for a defendant to appeal a decision.

National Perspective on Key Tort Reform Issues

	<i>Punitive Damage</i>	<i>Joint & Several Liability</i>	<i>Prejudgment Interest</i>	<i>Collateral Source Rule</i>	<i>Noneconomic Damage</i>	<i>Product Liability</i>	<i>Class Action Reform</i>	<i>Attorney Retention Sunshine</i>	<i>Appeal Bond Reform</i>	<i>Jury Service Reform</i>
Nebraska		X	X						X	
Nevada	X	X			X				X	
New Hampshire	X	X	X		◆	X			+	
New Jersey	X	X		X		X			X	
New Mexico		X								X
New York	X	X		X						
North Carolina	X					X			X	
North Dakota	X	X		X	X	◆		X		
Ohio	X	X	X	X	X	X	X		X	X
Oklahoma	X	X	X	X	X				X	X
Oregon	X	X		X	◆				X	
Pennsylvania		X							X	
Rhode Island			X							
South Carolina	X	X			X				X	
South Dakota	X	X							X	
Tennessee*									X	
Texas	X	X	X		X	X	X	X	X	X
Utah	X	X			X				X	X
Vermont		X							+	
Virginia	X							X	X	
Washington		X			◆					
West Virginia		X			X				X	
Wisconsin	X	X			◆				X	
Wyoming		X								

*Tennessee abolished joint and several liability by judicial decision

◆ Denotes state where reform was struck down as unconstitutional and no additional reforms have been enacted.

+ Denotes state where appeal bond is not required for a defendant to appeal a decision.



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MISSOURI TORT REFORMS

Appeal Bond Reform: HB 393 (2005). Limits the amount a defendant can be required to pay to secure the right to appeal to \$50 million.

Appeal Bond Reform: SB 242 (2003). Limits the amount that signatories to the Master Settlement Agreement are required to pay to secure the right to appeal to \$50 million.

Class Action Reform: H.B. 1211 (2004). Provides for the interlocutory appeal of class certifications.

Collateral Source Rule Reform: HB 393 (2005). Modifies the collateral source rule to allow the actual amount of paid medical expenses to be introduced into evidence rather than the amount billed.

Collateral Source Rule Reform: HB 700 (1987). Permits the admissibility of evidence of collateral source payments, but provided that a defendant who presents collateral source payments as evidence waives his right to a credit against the judgment for that amount.

Joint and Several Liability Reform: HB 393 (2005). Provides that joint and several liability applies if a defendant is 51 percent or more at fault. In such circumstances, the defendant is jointly and severally liable for the amount of the judgment rendered against the defendant. If a defendant is found to be less than 51 percent at fault, the defendant is only responsible for the percent of the judgment he or she is responsible for.

Joint and Several Liability Reform: HB 700 (1987). Bars application of the rule of joint and several liability in the recovery of all damages when a plaintiff is assessed a portion of the fault.

Joint and Several Liability Reform: Mo. Stat. § 537.067. Limits joint liability to two times the defendant's percentage of fault, if the plaintiff was at fault.

Jury Service and Class Action Reform: H.B. 1211 (2004). Provides for stricter criteria for jurors to be excused from service. Allows one automatic postponement from service. Specifies a maximum fine of \$500 for those who fail to appear for jury service. Provides for employee protections which prohibits employers from requiring employees to use personal or sick leave for time spent responding to a summons for jury duty. Provides for small business protections which required a court to reschedule the service of a summoned juror if the juror works for an employer with five or fewer employees and has another employee already summoned during the same period.

Medical Liability Reform/Expressions of Sympathy: HB 393 (2005). Prohibits statements, writings, or benevolent gestures expressing sympathy by medical providers from being admitted into evidence.

Medical Liability Reform/Noneconomic Damages: HB 393 (2005). Limits noneconomic damages in medical liability cases to \$350,000 regardless of the number of defendants in the case.

MISSOURI TORT REFORMS (continued)

Medical Liability Reform/Statute of Limitations for Minors: HB 393 (2005). Specifies that actions against physicians and other health care providers for malpractice must be brought within two years of a minor's eighteenth birthday.

Medical Liability Reform/Volunteer Immunity: HB 393 (2005). Provides civil immunity from damages for physicians who provide uncompensated medical care (volunteer services).

Medical Liability Reform: Noneconomic Damages Reform: Mo. Stat. § 538.210. Limits noneconomic damages in medical liability cases to \$350,000, to be increased or decreased on an annual basis in accordance with the Implicit Price Deflator for Personal Consumption Expenditures. *The \$350,000 limit on noneconomic damages recoverable from any one defendant in a health care liability action did not violate equal protection clauses of the State or Federal Constitutions, or open courts or right to remedy provisions of State Constitution. Adams v. Children's Mercy Hospital, 832 S.W.2d 898 (Mo.), cert. denied, 506 U.S. 991 (1992).*

Medical Liability Reform: Periodic Payment of Future Damages: Mo. Stat. § 538.220. Allows a court to order the periodic payment of future damages exceeding \$100,000 in medical liability cases.

Obesity Litigation Reform: H.B. 1115 (2004). Exempts from civil liability manufacturers, packers, distributors, carriers, holders, sellers, marketers, or advertisers of food (as defined in Title 21 U.S.C. Section 301 (F)) or an association of one or more such entities when the claim is for weight gain, obesity, or a health condition associated with weight gain or obesity. The liability exemption does not apply if the claim is based on a material violation of a state or federal adulteration or misbranding requirements. The liability exemption also does not apply for any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food and the violation was committed knowingly and willfully. The provisions of the bill do not preclude civil liability for breach of express contract or express warranty in connection with the purchase of food. Finally, H.B. 1519 provides that discovery and all other proceedings shall be stayed during a motion to dismiss.

Post Judgment Interest Reform: HB 393 (2005). Specifies that post-judgment interest is to be calculated at an interest rate equal to the Federal Funds Rate plus five percent.

Prejudgment Interest Reform: HB 393 (2005). Specifies that prejudgment interest is to be calculated at an interest rate equal to the Federal Funds Rate plus three percent.

Prejudgment Interest Reform: HB 700 (1987). Permits the assessment of prejudgment interest only in cases where the judgment exceeds a settlement offer.

Punitive Damages Reform: HB 393 (2005). Limits punitive damages to \$500,000 or five times the judgment, whichever is greater. Limit does not apply to certain cases involving housing discrimination.

Punitive Damages Reform: HB 700 (1987). Requires the determination of awards for punitive damages to be made in a separate proceeding. Permits the jury to set the amount for punitive damages if, in the first stage, the jury finds a defendant liable for punitive damages. Permits the admissibility of evidence of a defendant's net worth only during the proceeding for the determination of punitive damages. Requires 50% of all punitive damages awards to be paid to the state fund. Prohibits multiple punitive damages awards under certain conditions.

MISSOURI TORT REFORMS (continued)

Punitive Damages Reform: Clear and Convincing Requirement: *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104 (Mo. 1996). Requires a plaintiff to prove punitive damages by clear and convincing evidence.

Venue Reform: HB 393 (2005). Establishes venue in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in all tort actions in which the plaintiff was first injured in Missouri. Establishes venue in all tort actions in which the plaintiff was first injured outside Missouri: (a) For corporate defendants, in any county where the registered agent is located or, if the plaintiff's principal place of residence was in Missouri when the plaintiff was first injured, in the county of the plaintiff's principal place of residence on the date the plaintiff was first injured; and (b) for individual defendants, in any county of the defendant's principal place of residence in Missouri or, if the plaintiff's principal place of residence was in Missouri when the plaintiff was first injured, in the county containing the plaintiff's principal place of residence on the date the plaintiff was first injured. Specifies that in wrongful death actions the plaintiff is considered first injured where the decedent was first injured by the wrongful acts or negligent conduct alleged in the action. Specifies that in a spouse's claim for loss of consortium the plaintiff claiming consortium is considered first injured where the other spouse was first injured by the wrongful act or negligent conduct alleged in the action. Specifies that the court must transfer venue to the county unanimously chosen by the parties if all parties agree in writing to a change of venue. If parties are added after the date of the transfer and they do not consent to the transfer, the cause of action will be transferred to a county in which venue is otherwise appropriate.



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OHIO TORT REFORMS

Appeal Bond Reform: HB 161 (2002). Limits the amount a defendant can be required to pay to secure the right to appeal to \$50 million.

Asbestos Litigation Reform: H.B. 292 (2004). Establishes minimum medical requirements (based on AMA guide to the evaluation of permanent impairment) for filing asbestos claims. Specifies plaintiff's burden of proof in asbestos actions. Establishes premises liability with respect to asbestos claims.

Asbestos Litigation Reform: Am. Sub. S.B. 80 (2004). In tort actions, limited the liability for certain successors in tort actions to the value of the acquired company on the effective date of the acquisition.

Class Action Reform: HB 394 (1998). Provides for the interlocutory appeal of class action certification.

Collateral Source Rule Reform: Am. Sub. S.B. 80 (2004). Provides that collateral source benefits can be introduced into evidence, except under certain circumstances.

Collateral Source Rule Reform: HB 350 (1996). Permits the admissibility of evidence of collateral source payments, including workers' compensation benefits, but only if there is no right of subrogation attached or the plaintiff has not paid a premium for the insurance. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Collateral Source Rule Reform: HB 1 (1987). Provides for awards to be offset by payments of collateral source benefits that have been paid or are likely to be paid within 60 months of judgment, unless the source of reimbursement has a subrogation right. *The statute providing offset of collateral source benefits received by a plaintiff violated the right to jury trial, due process, equal protection, right to open courts, and right to meaningful recovery provisions of the State Constitution. Sorrell v. Thevenir, 633 N.E.2d 504 (Ohio 1994). Samuels v. Coil Bar Corp., 579 N.E.2d 558 (Ohio Cm. Pl. 1991) (same as applied to wrongful death actions).*

Comparative Fault: HB 350 (1996). Allows juries to consider the comparative fault of non-parties when apportioning liability. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Contingent Fee Reform: HB 350 (1996). Prohibits the assessment of contingent fees for expert witnesses. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Crime Victims' Immunity: HB 547 (1998). Prevents individuals convicted of a felony or violent misdemeanor from suing their victims for personal injury or damages suffered in the course of

OHIO TORT REFORMS (continued)

committing the crime. Broadens the definition of "tort action" to specifically include a product liability claim, an action for wrongful death, and an action based on derivative claims for relief.

Employer Reference Liability: HB 44 (1996). Grants liability protection to an employer who releases information about an employee unless the claimant proves either or both of the following: by "clear and convincing" evidence that the employer disclosed the information knowing it to be false or with intent to mislead in bad faith with malicious purpose; or, by a preponderance of the evidence that the disclosure violates the Ohio Civil Rights Commission Law. Includes a loser pays provision.

Frivolous Lawsuit Penalty: HB 350 (1996). Allows a court to order sanctions for frivolous conduct. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Good Samaritan Immunity: HB 350 (1996). Protects volunteers from liability. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and the one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Improvements to Real Property: Statute of Repose: Am. Sub. S.B. 80 (2004). Provides that tort actions, based on construction or improvement of real property, for injury or wrongful death, cannot be brought ten years after the substantial completion of the construction or improvement.

Joint and Several Liability Reform: HB 350 (1996). Bars application of the rule of joint and several liability for the recovery of noneconomic damages, where the plaintiff was contributorily negligent or impliedly assumed the risk that caused the harm. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and the one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Jury Service Reform: S.B. 71 (2004). Provides for one automatic postponement from service with the requirement that juror must reschedule service within six months of the original summons. Sets stricter criteria to be excused from service and allowed citizens 75 years of age or older to be excused upon request. Prohibits employers from taking any disciplinary action that could lead to the discharge of any permanent employee due to absence from work for jury duty. Provides that employers may not require an employee to use annual, vacation, or sick leave time for the time period of service. Protected small business (with twenty five or fewer full-time employees) by requiring the court to postpone and reschedule the service of an employee of a small business if another employee of that employer is summoned to jury service during the same period. Reduces the maximum period of availability for jury service from three weeks to two weeks. Provides for the establishment of an electronic juror notification system (cellular telephone, pager, or other forms of telecommunication) to alert the juror of the need to appear in person in court during the period of availability provided in the juror summons. Eliminates the maximum permitted daily juror compensation rate of \$40. Provides the Board of County Commissioners with authority to provide a higher rate of compensation. Increases the minimum fine for failure to appear for jury service from \$25 to \$100. The maximum \$250 was unchanged by the new law.

Legal Consumer's Bill of Rights: Am. Sub. S.B. 80 (2004). Requests that the Ohio Supreme Court adopt a "Legal Consumer Bill of Rights" outlining attorney and client responsibilities. Attorney responsibilities include: courtesy, professionalism, attention, fee disclosure, responsiveness, control,

OHIO TORT REFORMS (continued)

respect, confidentiality, ethics, non-discrimination, and grievances. Client responsibilities include: truthfulness, responsiveness, courtesy, communication, and ethics.

Medical Liability Reform: Certificate of Merit: HB 350 (1996). Requires a certificate of merit in medical liability actions. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and the one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Medical Liability Reform: Nursing Home Liability Reform: HB 412 (2002). Reforms the state's civil liability laws governing lawsuits against nursing home or other residential facility caretakers.

Medical Liability Reform: Periodic Payment of Future Damages: *The statute requiring periodic payments of future damages awards in medical liability suits violated the right to jury trial and due process provisions of the State Constitution. Galayda v. Lake Hospital Systems, Inc., 644 N.E.2d 298 (Ohio 1994), reconsideration denied, 644 N.E.2d 1389 (Ohio), cert. denied sub nom. Damian v. Galayda, 516 U.S. 810 (1995).*

Medical Liability Reform: Statute of Limitations Reform: HB 350 (1996). Adopts a six year statute of limitations in medical liability claims. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and the one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Medical Liability Reform: Noneconomic Damages Reform: S.B. 281 (2003). Limits non-economic damages to \$350,000, which can rise up to \$1 million depending on the severity of the injury and the number of plaintiffs involved in the suit.

Noneconomic Damages Reform: Am. Sub. S.B. 80 (2004). Limits noneconomic damages in cases involving noncatastrophic injuries to the greater of \$250,000 or three times economic damages up to \$350,000, per plaintiff, with a maximum limit of \$500,000 per occurrence. Limits applied to all cases but medical liability cases. Specifies that juries may not consider the following when determining noneconomic damages: (1) evidence of a defendant's alleged wrongdoing, misconduct or guilt; (2) evidence of the defendant's wealth or financial resources; (3) all other evidence that is offered for the purpose of punishing the defendant. Finally, S.B. 80 specifies procedures and guidelines, based on ALEC's *Full and Fair Noneconomic Damages Act*, for trial courts to review (upon a motion) noneconomic damage awards.

Noneconomic Damages Reform: HB 350 (1996). Limits the award of noneconomic damages to the greater of \$250,000 or three times economic damages to a maximum of \$500,000, unless there is a finding that a plaintiff suffered: (1) a permanent and severe physical deformity; or (2) a permanent physical functional injury that permanently prevents her from being able to independently care for herself and perform life sustaining activities. Provides that if a plaintiff establishes the criteria set forth above, noneconomic damages are limited to the greater of \$1 million or \$35,000 times the number of years remaining in the plaintiff's expected life. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and the one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Obesity Litigation Reform: Am. Sub. S.B. 80 (2004). Exempts from civil liability manufacturers, marketers, distributors, advertisers, sellers, suppliers of a qualified product (defined as articles used for food or drink for a human being or other animal; chewing gum; articles used for components of the

OHIO TORT REFORMS (continued)

previously listed products) or a trade association when the claims is based on cumulative consumption, weight gain, obesity, or a health condition related to cumulative consumption, weight gain, or obesity. Provides that a party that prevails on a motion to dismiss may recover reasonable attorney fees and costs associated with the motion to dismiss. The liability exemption does not apply for any material violation of federal or state law applicable to the manufacturing, marketing, supplying, distribution, advertising, labeling, or sale of a qualified product and the violation was committed knowingly and willfully. The provisions of the bill do not preclude civil liability for breach of express contract or express warranty in connection with the purchase of a qualified food product. H.B. 1519 provides that discovery and all other proceedings shall be stayed during a motion to dismiss and that a party that prevails on a motion to dismiss may recover reasonable attorney fees and costs.

Product Liability Reform: Statute of Repose: Am. Sub. S.B. 80 (2004). Provides for a ten-year statute of repose for product liability actions, with certain exceptions.

Product Liability Reform: HB 350 (1996). Amends product liability law to include additional requirements for establishing liability. Prohibits expanding theories of liability, including enterprise liability. Adopts a fifteen-year statute of repose in product liability cases, absent latent harm or fraud. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and the one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*

Product Liability Reform: HB 1 (1987). Provides that a product's design is not defective if: (1) an injury occurs due to the inherent characteristics of a product, where the characteristics are recognized by the ordinary person with ordinary knowledge common to the community; or (2) an injury occurs because of a design which is state of the art, unless the manufacturer acted unreasonably in introducing the product into trade or commerce. Provides that a product is not defective due to lack of warnings if the risk is open and obvious or is a risk that is a matter of common knowledge. Establishes a complete defense for manufacturers and sellers of ethical drugs and/or devices if they have supplied adequate warnings to learned intermediaries, unless the FDA requires additional warnings. Provides that a drug manufacturer shall not be liable for punitive damages if the drug was approved by the FDA.

Punitive Damages Reform: Am. Sub. S.B. 80 (2004). Limits punitive damages to not more than two times compensatory damages. Limits punitive damages for small businesses to the lesser of two times compensatory damages or 10 percent of a defendants net worth, not to exceed \$350,000. Small businesses are defined as having less than 100 employees or manufacturers that have less than 500 employees. Prohibits the award of punitive damages if punitive damages have already been awarded based on the same act or conduct that is alleged, except under certain circumstances.

Punitive Damages Reform: Bifurcated Trial: Am. Sub. S.B. 80 (2004). Provides that in jury trials, if punitive damages are requested by any party, the trial is bifurcated so that the jury considers compensatory damages in one stage, and punitive damages in a second stage.

Punitive Damages Reform: Over-the Counter Drugs and Medical Devices: Am. Sub. S.B. 80 (2004). Provides that manufacturers of over-the-counter drugs and medical devices are not liable for punitive damages if the FDA approved the product. This was an extension of existing law which provided for a government standards defense for manufacturers of prescription drugs.

Punitive Damages Reform: HB 350 (1996): Ohio Rev. Code Ann. § 2307.80(A). Limits the amount of punitive damages recoverable from all parties except large employers to the lesser of three times the

OHIO TORT REFORMS (continued)

award of compensatory damages or \$100,000. Limits the amount of punitive damages recoverable from large employers (more than 25 employees on a full time permanent basis) to the greater of three times the award of compensatory damages or \$250,000. Requires the determination of awards for punitive damages to be made in a separate proceeding at the request of either party. Limits multiple punitive damages awards based on the same act or course of conduct. Expands the governmental defense standards to include non-drug manufacturers and manufacturers of over-the-counter drugs and medical devices. *The comprehensive 1996 tort reform law violated the doctrine of separation of powers and the one-subject provision of the State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999). The limit on punitive damages violated the jury trial provision of the State Constitution. Crowe v. Owens Corning Fiberglas, 718 N.E.2d 923 (Ohio 1999).*

Punitive Damages Reform: HB 1 (1987). Requires a plaintiff to show by “clear and convincing” evidence that she suffered “actual damages” because a defendant acted with “malice, aggravated or egregious fraud, oppression or insult” for the award of punitive damages. Provides a government standard defense for FDA approved drugs.

Seat Belt Evidence Reform: Am. Sub. S.B. 80 (2004). Permits evidence to be introduced of plaintiffs non-seat belt use for purposes of reducing noneconomic damages.

Silica/Mixed Dust Litigation Reform: H.B. 342 (2004). Establishes minimum medical requirements (based on AMA guide to the evaluation of permanent impairment) for filing silicosis claims or mixed dust disease claims. Specifies a plaintiff’s burden of proof in silica or mixed dust exposure actions. Establishes premises liability with respect to those claims.

Silica/Mixed Dust Litigation Reform: H.B. 342 (2004). Establishes minimum medical requirements (based on AMA guide to the evaluation of permanent impairment) for filing silicosis claims or mixed dust disease claims. Specifies a plaintiff’s burden of proof in silica or mixed dust exposure actions. Establishes premises liability with respect to those claims.

Statute of Repose Reform: S.B. 281 (2003). Establishes a statute of repose of 4 years from the time the injury occurred.

Statute of Repose Reform: HB 350 (1996). Adopts a fifteen-year statute of repose for improvements to real property. *The comprehensive 1996 tort reform law violated doctrine of separation of powers and one-subject provision of State Constitution. State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999).*



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TEXAS TORT REFORMS

Appeal Bond Reform: HB 4 (2003). Limits the amount a defendant can be required to pay to secure the right to appeal to the lesser of 50% of a defendant's net worth or \$25 million. Provides that defendants are no longer required to post a bond to appeal punitive damages. Provides that foreign judgments cannot be executed in Texas if appeal is pending in a foreign jurisdiction and a bond has been or will be posted.

Asbestos/Silica Litigation Reform: SB 15 (2005). Establishes medical criteria for all pending and future asbestos claims, including a requirement that all claimants submit a qualifying medical report with a pulmonary function test that demonstrates physical impairment. Provides that all pending asbestos claims that have not been scheduled for trial within 90 days after the effective date, except for cases involving cancer, are subject to the multi-district litigation court process. Assures that the most seriously ill—those suffering from mesothelioma or other malignancy caused exposure to asbestos or silica—will receive expedited trials and adequate compensation for their injuries. Requires that each asbestos case be tried on its own merits, not as a "bundle" of claims that may include a few truly sick claimants and dozens of unimpaired claimants. Shuts down the "mass screening" of potential asbestos and silica claimants that has resulted in tens of thousands of unimpaired asbestos claims in the courts.

Asbestos Liability Reform: Successor Liability: HB 4 (2003). Provides that if a company with liability for mining or sale of asbestos-containing products was merged or acquired by a successor prior to May 13, 1968, the limit of the successor company's liability for asbestos claims as a result of the acquisition is limited to the FMV of the acquired company at the time of acquisition. The limitation applies to "successors of successors," based on the FMV of the initially acquired company at the time of the initial acquisition.

Class Action Reform: HB 4 (2003). Provides for the interlocutory appeal of class action certification. Reforms attorney fees whereby fees are based on time and cost expended rather than a percentage of recovery. Provides for stay on all proceedings during appeal of class certification. Provides for administrative relief which requires a court to consider administrative relief from state agencies before certifying a class.

Contributory Negligence Reform: SB 5 (1987). Affirms the law that bars recovery of damages in negligence cases if the plaintiff is more than 50% responsible for his injuries and extends the law to include negligence cases for financial damages against professionals. Bars recovery of damages against the manufacturer, distributor, or retailer of a product if the plaintiff is 60% or more responsible for his injuries.

Deceptive Trade Practices Litigation Reform: Damages Limits: HB 668 (1995). Refocuses the original law's intent to protect consumers from fraud and deceptive practices. Limits recovery to economic damages in most cases. Allows treble damages if the seller knew his conduct was fraudulent or deceptive.

Early Offer of Settlement: HB 4 (2003). Provides that provisions may only be initiated by defendant, but once initiated, plaintiff may invoke them as well. Provides that if a defendant makes an offer that is rejected, and the plaintiff does not obtain a judgment for at least 80% of the amount, the plaintiff must pay attorney fees and costs incurred after rejection. Provides that if a plaintiff makes an offer that is rejected, and the judgment exceeds 120% of the amount, the defendant must pay attorney fees and costs incurred after rejection. Provides that the amount of fees and costs shifted cannot exceed the sum of noneconomic damages, punitive damages, and 50% of economic damages.

Firefighters Liability Reform: HB 4 (2003). Provides that volunteer fire and EMT personnel are liable only to the extent a county or county employees are liable.

Forum Non Conveniens: HB 755 (2005). Restores the discretion of trial court judges to dismiss lawsuits with little or no connection to Texas under the doctrine of *forum non conveniens*.

Forum Non Conveniens Doctrine: HB 4 (2003). Provides that the court must decline jurisdiction if there is a better forum for the suit.

Forum Non Conveniens Doctrine: SB 220 (1997). Restores the common-law doctrine of *forum non conveniens* to allow the court to decline to exercise jurisdiction in an action or claim for personal injury or wrongful death that arose outside of the state.

Forum Non Conveniens Doctrine: SB 2 (1993). Reinstates the *forum non conveniens* doctrine, which permits a court to decline to hear a case if justice would be better served by trying the case elsewhere.

Frivolous Lawsuit Sanction: SB 31 (1995). Adopts Federal Rule of Civil Procedure 11 so that a court may impose sanctions when a groundless lawsuit is filed.

Frivolous Lawsuit Sanction: SB 5 (1987). Allows courts to impose sanctions on attorneys and parties who file frivolous lawsuits.

Good Samaritan Protection: HB 4 (2003). Provides that volunteer workers for charitable organizations are immune from suit except for intentional torts and gross negligence.

Good Samaritan Protection: SB 215 (1999). Protects licensed health care providers who volunteer their services for or on behalf of charitable organizations from civil liability.

Good Samaritan Protection: SB 9 (1987). Limits the liability of charitable organizations and their employees to \$500,000 for each person, \$1,000,000 for each occurrence of bodily harm, and \$100,000 for each occurrence of property damage. Makes volunteers immune from liability for harm resulting from the performance of their duties for a charitable organization.

Government Employee Immunity: HB 4 (2003). Provides that government employees acting in course of employment cannot be subject to more than \$100,000 in damages if they are indemnified or insured by the governmental entity for the first \$100,000.

Government Liability Reform: HB 383 (1995). Provides a \$100,000 limit for specified cases of governmental liability.

Government Retention of Personal Injury Lawyers: SB 113 (1999). Requires that the state attempt to handle all litigation through in-house counsel. Provides that when seeking outside counsel, the

contracting agency must first seek an hourly fee arrangement. Provides that contingent fee contracts in excess of \$100,000 be approved by a Legislative Review Board. Requires that at the conclusion of contingent fee representation, the state receive a statement of hours worked and total fees recovered.

Interlocutory Appeals Reform: SB 453 (1997). Amends the Texas statute to allow an interlocutory appeal for a special appearance or a jurisdictional challenge over a unit of state or local government before the time and expense of trial have been incurred the land.

Joint and Several Liability Reform: HB 4 (2003). Defendant pays only assessed percentage of fault unless defendant is 50% or more responsible. Defendants can designate (as opposed to join) other responsible third parties whose fault contributed to causing plaintiff's harm. In toxic tort cases, the threshold for joint and several liability raised from 15% to 50%.

Joint and Several Liability Reform: SB 28 (1995). Bars application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 51% at fault.

Joint and Several Liability Reform: SB 5 (1987). Bars application of the rule of joint and several liability in the recovery of all damages from defendants found to be less than 20% at fault, except when a plaintiff is found to be fault free and a defendant's share exceeds 10%, and when damages result from environmental pollution or hazardous waste.

Jury Service Reform: SB 1704 (2005). Increases juror pay in both civil and criminal cases from not less than \$6 per day to not less than \$40 per day, beginning on the second day of service. The increased compensation is to be financed by a \$4 fee placed on individuals convicted of a crime. Provides prospective jurors with one automatic postponement from service, in which case service must be rescheduled within six months after the date of the original summons.

Medical Liability Reform: Emergency Room Physicians and OB-GYNs: HB 18 (1989). Indemnifies emergency room physicians and OB-GYNs for the first \$100,000.

Medical Liability Reform: Jury Instruction: HB 18 (1989). Requires that juries be instructed that a bad medical outcome does not necessarily justify a finding of negligence.

Medical Liability Reform: Pretrial Requirements: HB 971 (1995). Requires a plaintiff to file a \$5,000 cost bond (a bond given by a litigant to secure the payment of court costs), place \$5,000 in an escrow account, or file an expert report for each physician or health care provider listed in the claim. *The Medical Liability and Insurance Improvement Act's requirement that a plaintiff either file a cost bond or submit an expert report with a medical malpractice claim did not violate due process under the State or Federal Constitutions and was not a "special law" in violation of the State Constitution. McGlothlin v. Cullington, 989 S.W.2d 449 (Tex. App. 1999), cert. denied, 120 S. Ct. 616 (1999).*

Medical Liability Reform: Noneconomic Damages Reform: HB 4 (2003). Limits the award of noneconomic damages in medical malpractice cases to \$250,000 against all doctors and health care practitioners and a \$250,000 per-facility cap against health care facilities such as hospitals and nursing homes, with an overall cap of \$500,000 against health care facilities, creating in effect an overall limit of noneconomic damages in medical malpractice cases of \$750,000.

Medical Liability Reform: Sound Science: HB 18 (1989). Requires that expert witnesses be practicing physicians.

Medical Liability Reform: Volunteer Physicians: HB 18 (1989). Indemnifies physicians with a case load of at least 10% or more charity cases that meet risk management and insurance requirements for the first \$25,000.

Medical Liability Reform: Wrongful Death: Tex. Rev. Civ. Stat. art. 4590i § 11.02. Limits damages in wrongful death actions to \$500,000. *The statute originally limited damages in all negligence actions, but the Texas Supreme Court held it unconstitutional except as to wrongful death actions in Rose v. Doctors Hospital, 801 S.W.2d 841 (Tex. 1990) .*

Multi-district Litigation Reform: HB 4 (2003). Provides for the creation of a multi-district panel which can consolidate any cases with common issues of fact in a single district court for pre-trial proceedings, including disposition short of trial.

Noneconomic Damages Reform: H.J.R. 3/Proposition 12 (2003). Constitutional amendment that provides that the Texas Legislature has the authority to place limits on noneconomic damages.

Obesity Litigation Reform – HB 107 (2005). Exempts from civil liability trade associations, livestock producers, agricultural producers and manufacturers, sellers, marketers, distributors, and advertisers of food (as defined in 21 U.S.C. 321 (f);(g);(i)) for claims arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known conditions allegedly caused by or allegedly likely to result from long-term consumption of food. This liability exemption includes actions brought by a person other than the individual whose weight gain, obesity, or health condition the action is based. It also includes any derivative action brought by or on behalf of any individual or any representative, spouse, parent, child, or other relative or individual. The liability exemption does not apply for a violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling or sale of food and the violation was committed knowingly and willfully. The liability exemption also does not prohibit an action from being brought under Chapter 431, Health Safety Code; or by the attorney general under Section 17.47, Business & Commerce Code. Provides that discovery and all other proceedings shall be stayed during a motion to dismiss.

Officers and Directors Liability Reform: SB 5 (1987). Allows shareholders of a corporation to vote to exempt their directors from personal liability.

Prejudgment Interest Reform: HB 4 (2003). Sets the prejudgment interest rate to the New York Federal Reserve prime rate, with a floor of 5% and a ceiling of 15%.

Prejudgment Interest Reform: HB 971 (1995). Allows prejudgment interest only for damages that occurred before judgment.

Prejudgment Interest Reform: SB 6 (1987). Limits the period during which prejudgment interest may accrue if the defendant has made an offer to settle the lawsuit.

Product Liability Reform: HB 4 (2003). Provides for a 15 year statute of repose for product liability cases. In cases involving latent diseases, the plaintiff must have been exposed within 15 years of the product's sale and must show symptoms more than 15 years after the sale. Provides for an innocent seller provision which prohibits actions against non-manufacturing sellers except in specific circumstances such as if the seller participated in the design of the product or knew of the defect at the time of the sale. Provides for the presumption that a product is not defective if it meets mandatory government standards or was approved or licensed by the FDA. Allows plaintiff to rebuff by showing material omission or misrepresentation to agency, or that standards were insufficient to provide reasonable safety.

Product Liability Reform: SB 4 (1993). Requires proof of an economically and technologically feasible safer alternative design available at the time of manufacture in most product liability actions for defective design. Provides a defense for manufacturers and sellers of inherently unsafe products that are *known* to be unsafe. Establishes a fifteen-year statute of repose for product liability actions against manufacturers or sellers of manufacturing equipment. Provides protection for innocent retailers and wholesalers.

Professional Liability Reform: Architects and Licensed Professional Engineers: HB 4 (2003). Provides that the filing of a suit against an architect or licensed professional engineer for professional negligence must be accompanied by affidavit of expert witness who holds Texas license in the field and actively practices the same subject area as the defendant.

Public Servants Liability Reform: SB 5 (1987). Protects public servants from personal liability for harm resulting from the performance of their duties for the state.

Punitive Damages Reform: SB 25 (1995): Tex. Civ. Prac. & Rem. Code §§ 41.003, 41.008. Limits the award of punitive damages to the greater of \$200,000 or two times the award of economic damages plus non-economic damages up to \$750,000. Requires a plaintiff to show by "clear and convincing" evidence that a defendant acted with malice, defined as the "conscious indifference to the rights, safety, or welfare of others." Requires the determination of awards for punitive damages to be made in a separate proceeding at the request of the defendant.

Punitive Damages Reform: HB 4 (2003). Tex. Civ. Prac. & Rem. Code §§ 41.003. Requires unanimous jury verdict to award punitive damages. Specifies that jury must be so instructed.

Punitive Damages Reform: SB 5 (1987). Requires a plaintiff to show that a defendant's actions were fraudulent, malicious, or grossly negligent. Limits the award of punitive damages to the greater of four times the amount of actual damages or \$200,000.

School Employee Immunity: HB 4 (2003). Broadens definition of school employees entitled to immunity for actions involving the exercise of discretion in the course and scope of employment. Requires the exhaustion of school district administrative remedies prior to suit. Mandates payment of attorney fees and costs by plaintiff suing person subject to immunity. Provides that immunity does not extend to use of excessive force in discipline or negligence that results in personal injury to a student.

Seat Belts Admissibility: HB 4 (2003). Repeals statute forbidding any evidence of lack of seat belt use in auto accident cases.

Settlement Credits Reform: SB 890 (2005). Restores dollar-for-dollar settlement credit in a multiple defendant civil action.

Sound Science Reform: HB 971 (1995). Strengthens the qualifications for expert witness.

Venue Reform: HB 4 (2003). Provides that every plaintiff must establish venue independently of every other plaintiff. Mandates dismissal or transfer of any plaintiff who cannot establish venue except upon exception showing. Provides for interlocutory de novo appellate review of order granting or denying transfer or dismissal.

Venue Reform: SB 32 (1995). Allows a plaintiff to bring a lawsuit where the injury occurred, where the defendant resides, or (if none of those apply) where the plaintiff resided when the injury or harm occurred.



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Recent Tort Reforms in Other Mid-Western States

ILLINOIS REFORMS

2005

Medical Liability Reform: Expert Witness Standards: SB 475 (2005). In an action against a medical professional, defines an expert witness who: (1) is board certified or board eligible in the same or similar specialty as the defendant; (2) has devoted a majority of work time to the practice, teaching, or University based research in relation to the type of care or treatment at issue in the claim; (3) is licensed in the same profession with the same class of license as the defendant if the defendant is an individual; (4) in a case against a nonspecialist, an expert shall demonstrate familiarity with the standard of care and shall provide evidence of active practice, teaching, or university research. If retired, an expert must provide evidence of completion of continuing education for three previous years. An individual must have actively practiced, taught, or engaged in university research, or any combination thereof, during the past five years to qualify as an expert witness.

Medical Liability Reform: Expressions of Sympathy: SB 475 (2005). Provides that expressions of grief, apology, including a statement that the healthcare provider is sorry for the outcome to the patient, is inadmissible as evidence.

Medical Liability Reform: Good Samaritan Protections: SB 475 (2005). Amends the Good Samaritan Act to apply civil immunity protections to retired physicians who provide services without compensation.

Medical Liability Reform: Noneconomic Damages Reform: SB 475 (2005). Limits noneconomic damages in medical liability cases to \$500,000 per physician and \$1 million per hospital.

2004

Obesity Litigation Reform: HB 3981 (2004). Specifies that no person shall bring a qualified civil liability action [defined as a civil action being brought by any person against a seller of food, as defined in 21 U.S.C. 321 (f), for damages or injunctive relief based on a claim of injury resulting from the person's weight gain, obesity, or any health condition related to weight gain or obesity. The liability exemption does not apply: if the seller knowingly and willfully violated a federal or State statute applicable to the marketing, distribution, advertisement, labeling, or sale of the product; in an action for breach of contract or express warranty in connection with the purchase of the qualified product; or an action regarding the sale of a qualified product which is adulterated, as described in Section 402 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342.

IOWA REFORMS

2004

Appeal Bond Reform: SF 2306 (2004). Limits the amount a defendant can be required to pay to secure the right to appeal to \$100 million.

2000

Noneconomic Damages Reform: HF 2525 (2000). Prohibits a motorist, passenger or pedestrian from collecting non-economic damages for injuries sustained in an auto crash caused during the commission of a felony.

1997

Joint and Several Liability Reform: HF 693 (1997): Iowa Code Ann. § 668.4. Bars application of the rule of joint and several liability in the recovery of all noneconomic damages, and economic damages, where a defendant is found to be less than 50% at fault.

Prejudgment Interest Rate Reform: HF 693 (1997). Sets the prejudgment interest rates at the U.S. Treasury Rate plus 2%.

Product Liability Reform: Statute of Repose: HF 693 (1997). Establishes a 15-year statute of repose for product liability lawsuits not involving fraud, concealment, latent diseases caused by harmful materials, or specified products.

MINNESOTA REFORMS

2004

Appeal Bond Reform: HF 1425 (2004). Limits the amount a defendant can be required to pay to secure the right to appeal to \$100 million.

Civil Liability Reform: SF 837 (2004). Provides civil liability protections for employers who provide job references about current and former employees.

2003

Joint and Several Liability Reform: SF 872 (2003). Provides that joint and several liability does not apply to defendants found to be less than 50% at fault.